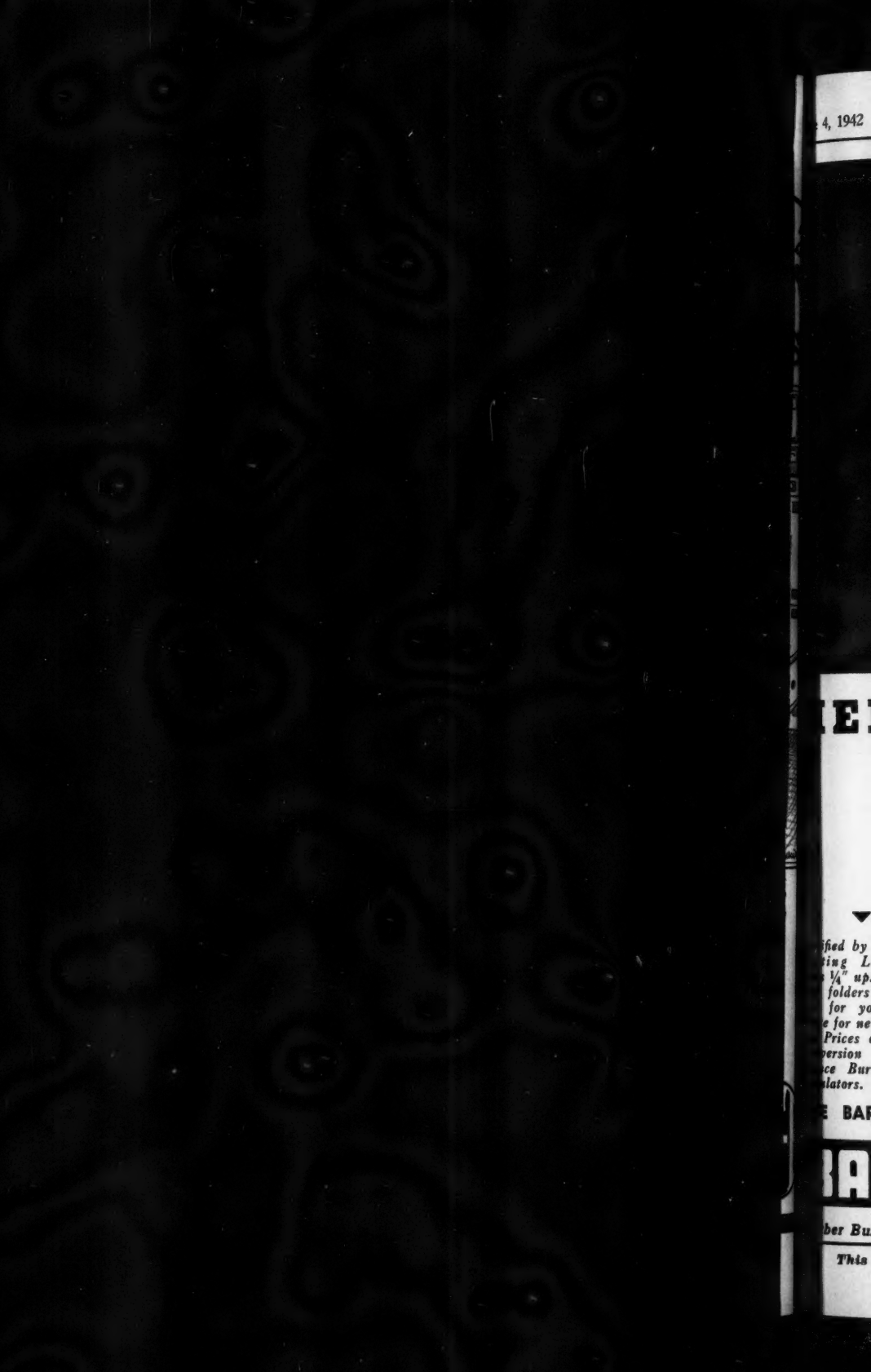
Public Utilities

FORTNIGHTLY

June 4, 1942

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS



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Public Utilities Fortnightly

VOLUME XXIX *June 4, 1942* NUMBER 12

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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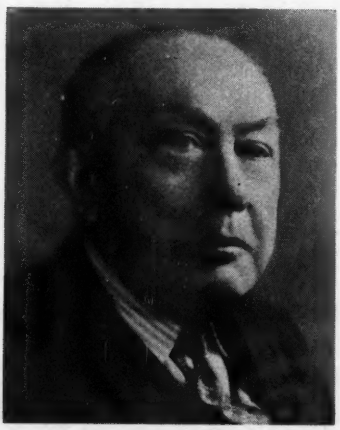
Pages with the Editors

AT this late date, it's dreadfully trite to keep wondering aloud what a difference a few years can make in the life, liberties, and pursuit of happiness of the average Mr. American Citizen. But we cannot help noticing certain perverse developments which have taken place in America at War as compared with America in Depression.

A SCANT half-dozen years ago we were burdened with unemployment, too much production, and too little consumption resulting from inadequate mass purchasing power. Economists, politicians, lecturers, and busybodies in general, who make a living or a pastime of pointing out our defects to us, concentrated on certain bitter phrases and slogans.

"A THIRD of a nation—ill-fed, ill-housed, ill-clothed" was one. "Paradox of poverty in the land of plenty" was another. The "more abundant life" was still another.

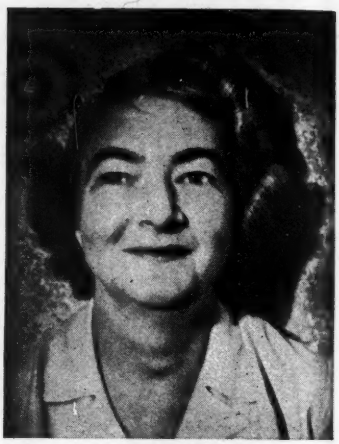
TODAY we have a labor shortage—a mass purchasing power gathering momentum faster than Congress can tax it. Against a background of shrinking consumer goods, more and more commodities fall under the shadow of the rationing card with each passing day.



HERBERT COREY

TVA has found rebellion on its home grounds.

(SEE PAGE 729)



LOUISE C. MANN

Neighboring Cuba knows a sugar daddy when she sees one.

(SEE PAGE 737)

Regular transportation is overtaxed. ODT threatens to "ground" the nonessential traveler. By coincidence, OPA tells us that one-third of all motorists should be put on short gasoline rations.

So today we have the makings of a different set of slogans: "A third of a nation ill-fueled, ill-tired, and ill-borne." "A paradox of need in a land of gold." "Spartan simplicity." As the Baltimore *Sun* cartoon reproduced on page 767 waggishly points out, it was President Roosevelt himself who made that farsighted observation back in May, 1935, "Horse and buggy days are here again." In the same spirit of fun, an irrepressible Republican politician recently recalled that it "took the Democrats more than a decade to keep their promise to put the nation back on its feet, but they are finally making good."

IT goes without saying, of course, that the American people, with few exceptions, are entering into the spirit of the new and simplified way of life. But we must be prepared for some startling by-products. The horse-drawn taxicab, hard benches placed in box cars like

so many pews in an humble whitewashed church, may yet come to pass. Already have come reports of such phenomena as a portly Federal judge on a bicycle and a dignified clergyman solemnly making his parish rounds on roller skates.

IN this issue (starting page 745), JAMES H. COLLINS, well-known business writer, now making his home in Hollywood, California, tells how a number of cities have discovered wealth shallowly buried in the middle of their own downtown streets—abandoned steel rails, more precious than gold or silver as far as practical war-time use is concerned.

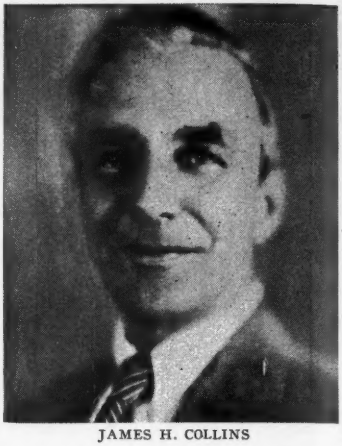
YES, salvaging has become quite the thing these days when the consumer is asked to turn in such items as empty tooth paste tubes and phonograph records as a prerequisite for making new purchases. There are compensations, too. We have had to listen to a number of phonograph records which we would cheerfully give up to the national war effort.

LOUISE C. MANN, our roving foreign correspondent, has finally come close enough to the shores of continental United States to give us a utility-slanted view of our coastal neighbor, Cuba. MRS. MANN finds that the good neighbor policy is succeeding in Cuba. Certainly this should come under the heading of good news. Any housewife will readily testify that it is mighty handy to have a next-door neighbor from whom one can hastily borrow a cup of sugar in need—and do we need sugar!

DURING World War I, the late comedian, Chic Sale, used to get many laughs when he told about the Tennessee mountaineer who became so disgusted with the world during the Civil War that he became a hermit. Hearing by chance that a fresh struggle had started, the old recluse seized his squirrel rifle, came down out of the mountains, and shot two letter carriers before somebody told him that the Civil War was over.

THE recent outbreak of the feud between U. S. Senator McKellar of Tennessee and the TVA, coming as it does during this critical period of World War II, seems just about as surprising. Senator McKellar has discovered the issue of states' rights and is riding full tilt against TVA federalism with all the gusto of Longstreet at Chickamauga. HERBERT COREY, Washington author, in his article "The Federals Are Coming," gives us an interesting background of the personalities involved in this controversy.

ON still another front the Federal power program seems to be fighting a Civil War of its own. In this conflict the "Federals" are centralizing under the command of Secretary of Interior Ickes. According to ANDREW BARNES, Washington newspaper correspondent, the home rule advocates are apparently getting the worst of it. MR. BARNES' article begins on page 750.



JAMES H. COLLINS

There is gold lying in the streets of many an American town.

(SEE PAGE 745)

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE public utilities commission for the District of Columbia discusses the necessity of utilities complying with orders of the War Production Board which have the effect of suspending orders, rules, and regulations of a regulatory commission and, at the same time, discusses discrimination resulting from war restriction of gas for space heating, favoring present users as against newcomers. (See page 65.)

THE Federal Power Commission, in denying an application for an order permitting the removal and relocation of certain natural gas pipe-line facilities, ruled upon such questions as what constitutes abandonment of facilities, the necessity of authorization for such abandonment, as well as various factors affecting the grant or denial of such an application. (See page 74.)

THE next number of this magazine will be out June 18th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 65–128, from 43 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

DAVIS M. DEBARD
Vice president, Stone & Webster Service Corporation.

"Our [gas industry's] greatest asset is our existing customers."

EDITORIAL STATEMENT
The Hartford (Conn.) Courant.

"It is not the law that bothers legitimate industry; it is the interpretation the government and its agencies may place on the law."

EDITORIAL STATEMENT
The Wall Street Journal.

"Rationing is not a weapon to combat inflation and any attempt to use it in such a way will bring any number of dislocations, including inflation."

FRANK R. KENT
Newspaper columnist.

"The inability of politicians and political experts accurately to forecast the reaction of the American people has been demonstrated many times in the past."

DONALD M. NELSON
Chairman, War Production Board.

"I tell you this is a time to stop thinking about what we are going to do after it is all over and think of what we can do to prevent its being all over for us, and do it right now."

EDITORIAL STATEMENT
The New York Times.

"A technical work, a biography, a volume of history or economics, a serious novel may spread its ideas even among those who do not read them, for those who read also talk, and all can listen."

HAROLD VAGTBORG
Director, Institute of Gas Technology.

"Neither the gas industry nor the national war effort can be served effectively by that type of 'research' which consists solely in thinking up ways to take the other fellow's markets away from him."

ROBERT S. LYND
Professor of Sociology, Columbia University.

"Human motivation has been so constricted and battered under a system that says men do only what they are paid to do that we have habituated ourselves to expecting men to yield energy only grudgingly and under coaxing."

ERLE P. HALLIBURTON
President, Halliburton Oil Well Cementing Company.

"Special groups continually are demanding of Congress that government enter into competition with private enterprise. Few of them realize that without the profits and income of free enterprise, there would be no appropriations for the TVA's and the REA's."

WALTER D. FULLER
President, Curtis Publishing Company.

"We must not lose sight of the fact that the wants and desires of 130,000,000 Americans have never been fulfilled. Consumption has to be pioneered just the same as production. We have never consumed to capacity, never sold to capacity, never produced to our capacity—not even today."

EDITORIAL STATEMENT
American Bar Association Journal.

"Sometimes the institutions and traditions which a long war can cripple or obliterate are the heaviest losses of mankind. . . . Men can forget the principles of representative government, and impartial trial, and merciful justice. The soldier sees little of them in his daily life. Conflict soon accustoms us to other standards."

HAROLD H. BURTON
U. S. Senator from Ohio.

"At the end of the war a crisis will come in choosing the fundamental plan to meet the problems of peace. If, at that moment, the heavy, hard hand of state regimentation and governmental ownership, or of private dictatorship, takes control for whatever reason it may give, we shall have won the war only to lose our freedom to some form of a totalitarian state under whatever new name it may be hidden."

JOSEPH B. EASTMAN
Director, Office of Defense Transportation.

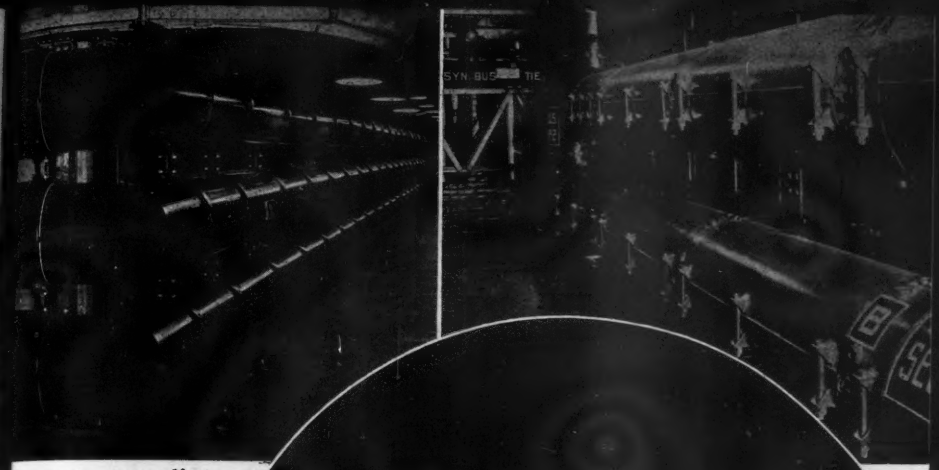
"Before I was appointed to my present position [Director of Defense Transportation], I thought of war transportation mainly in terms of locomotives, freight cars, trucks, and the carriage of freight generally. It was no more than a day or two after I was appointed before I was made forcibly aware that war transportation presents grave problems with respect to the carriage of persons also and particularly in connection with the local transportation essential to the war production effort."

STATEMENT
Chamber of Commerce of the State of New York.

"This chamber [New York Chamber of Commerce] for more than a century and a half—in peace time and war time alike—has been a leader in advocating an adequate national defense. It has raised its voice in support of every sound measure for the security of the nation. If it had believed that the St. Lawrence project would fill a defense need which could not be met more effectively and more quickly in some other way, irrespective of cost, it long since would have urged and worked for its construction."

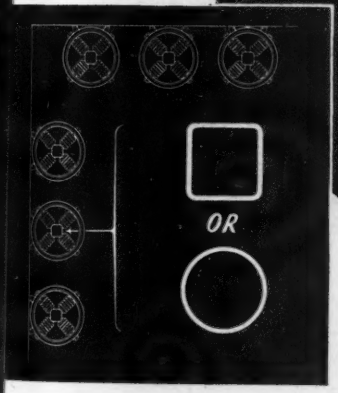
EDITORIAL STATEMENT
Traffic World.

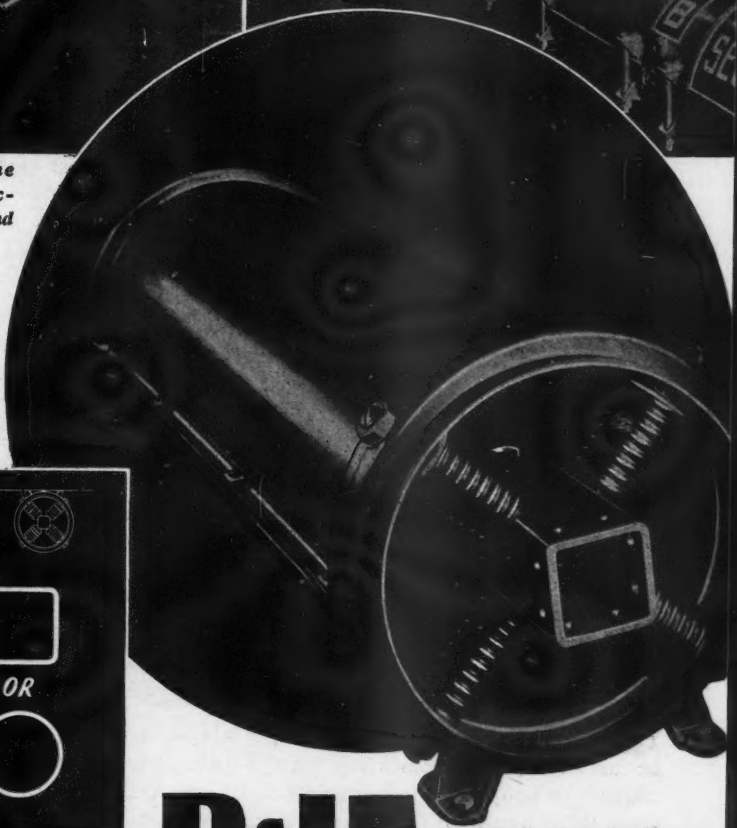
"The way to insure against the government taking over transportation and doing a lot of things it should not do, as well as doing inefficiently the things it should do, is to recognize and admit the things that should be done and do them now, while private management still exists. Protests based on the giving up of liberty and the rights of private enterprise should be confined to things that are foolish, wasteful, or unnecessary, and not directed at things that are manifestly for the public good."



ote neat, streamline ppearance—easily ac- ssible to inspection and djustment.

o superstructure nec- ssary—easily mounted o wall or ceiling. Note ir gap between phases. uses can be round or quare as shown below.





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2. **Gasketed covers are housings only, —take none of the stress.**
3. **Installation and adjustment made before covers are put on.**
4. **Housing covers can be removed easily for inspection.**

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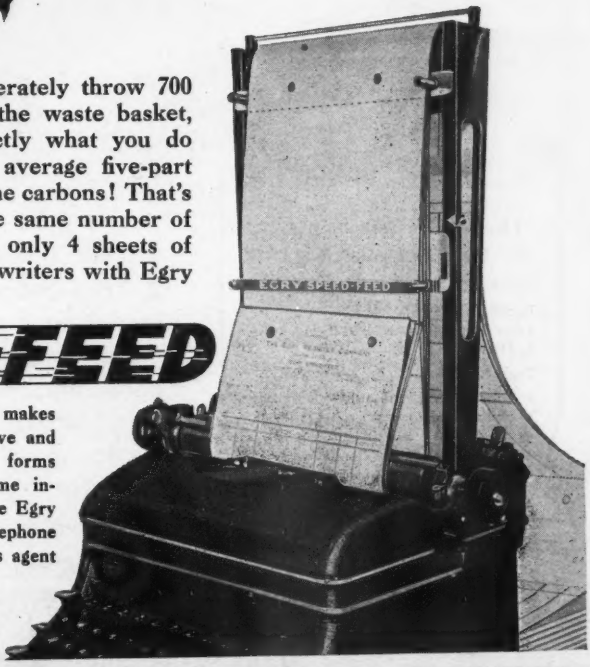

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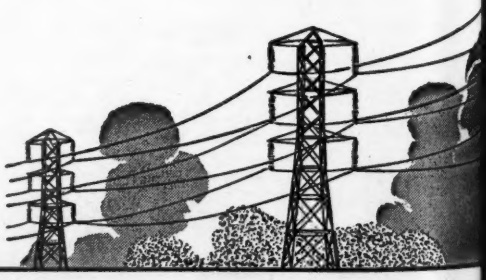

HOOSIER ENGINEERING COMPANY

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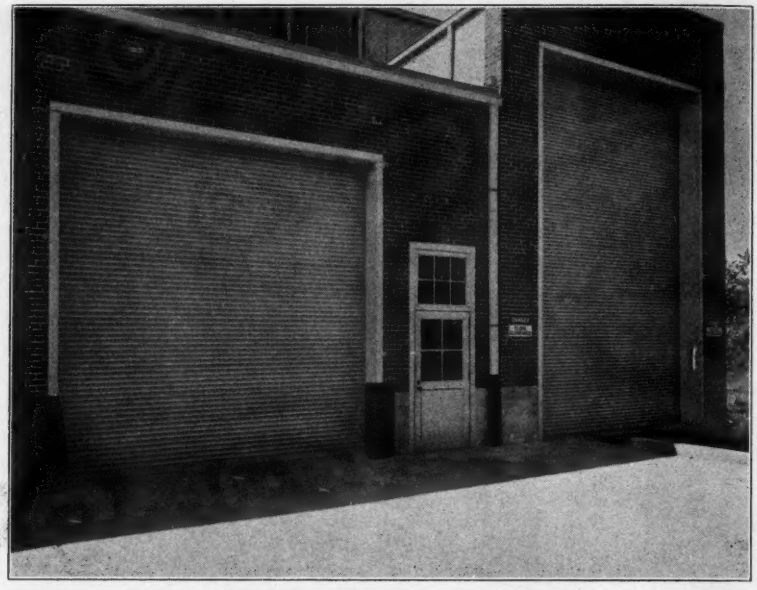
ERECTORS OF TRANSMISSION LINES



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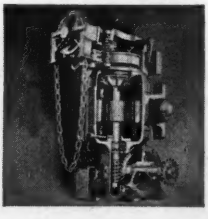

REMOTE CONTROL. Pushbutton door control at any number of convenient locations saves still more time and effort. Optional with any Kinnear Motorized Door.

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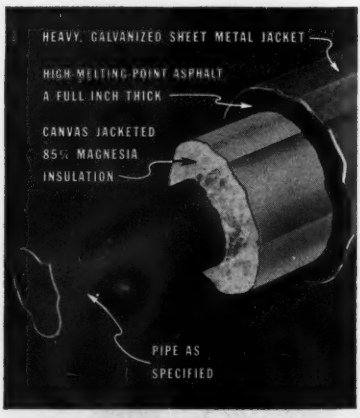

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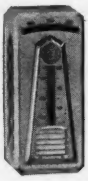

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A fully descriptive catalog for your supply source library may be had on request. Mercoid engineers will advise with you on control problems.

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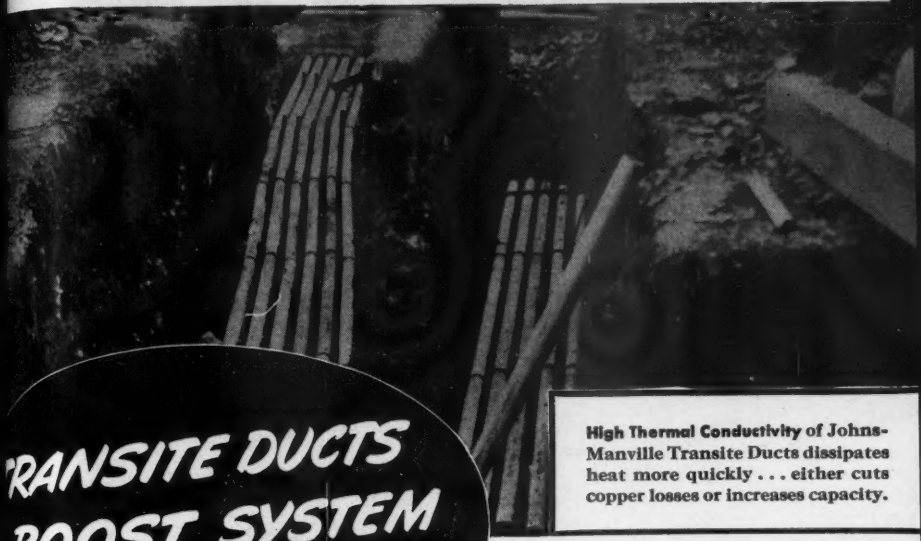

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High Thermal Conductivity of Johns-Manville Transite Ducts dissipates heat more quickly . . . either cuts copper losses or increases capacity.

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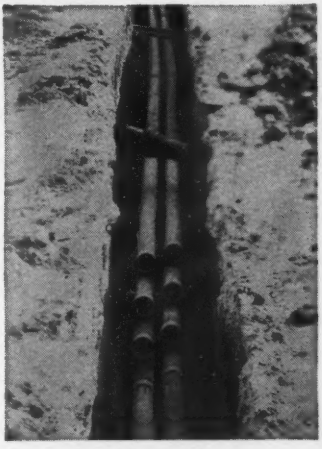
What's more, you spend less on upkeep, for Trans- Ducts can't rust, rot or burn. They effectively ist corrosion and do not soften, swell or blister. eir smooth bore *stays* smooth . . . makes cable re- val and replacement as easy as initial installation. d because Transite Ducts come in long, light gths with a complete line of fittings, jobs are fin- ed quickly and economically. For details, write for chure DS-410. Johns-Manville, 22 E. 40th St., w York, N. Y.



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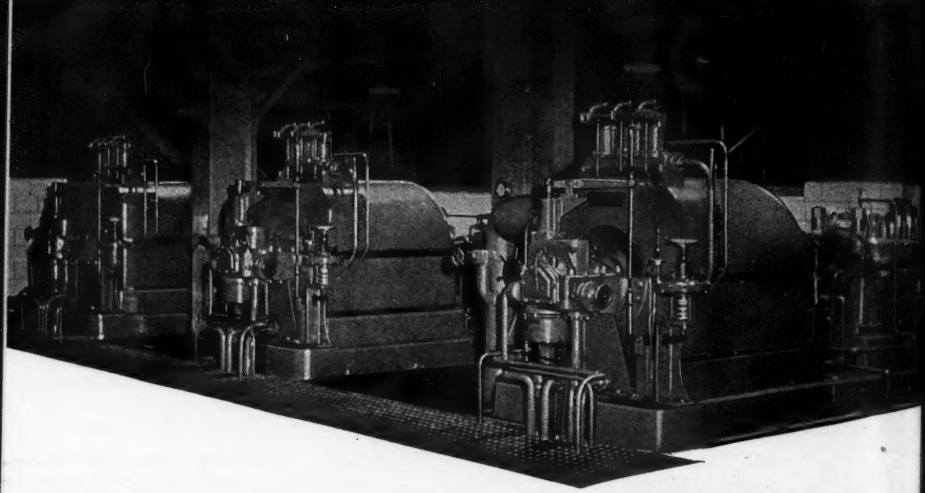

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Utilities Almanack

JUNE

4	Th	¶ *Canadian Gas Association starts convention, Montreal, Que., 1942.* ¶ *Pacific Coast Gas Association opens sectional meeting, Los Angeles, Cal., 1942.*
5	F	¶ *California Independent Telephone Association will convene, Santa Monica, Cal., June 18, 19, 1942.*
6	Sa	¶ *Public Utilities Advertising Association will hold meeting, New York, N. Y., June 21–24, 1942.*
7	S	¶ *National Association of Tax Administrators convenes, Des Moines, Iowa, 1942.*
8	M	¶ *American Society of Mechanical Engineers starts meeting, Cleveland, Ohio, 1942.* ¶ *Conference of Mayors of the State of New York begins, Syracuse, N. Y., 1942.*
9	Tu	¶ *North Dakota Telephone Association starts meeting, Grand Forks, N. D., 1942.*
10	W	¶ *Canadian Electrical Association begins convention, Seigniory Club, Que., 1942.*
11	Th	¶ *EEI convenes for special meeting, New York, N. Y., 1942.* ¶ *Pacific Coast Gas Association opens meeting, Los Angeles, Cal., 1942.*
12	F	¶ *Colorado Municipal League starts annual meeting, Fort Collins, Colo., 1942.*
13	Sa	¶ *American Water Works Association will open convention, Chicago, Ill., June 21–25, 1942.*
14	S	¶ *American Society for Testing Materials will hold annual meeting, Atlantic City, N. J., June 22–26, 1942.*
15	M	¶ *League of Minnesota Municipalities starts session, Ely, Minn., 1942.*
16	Tu	¶ *American Institute of Electrical Engineers will hold summer convention, Chicago, Ill., June 22–26, 1942.*
17	W	¶ *Institute of Radio Engineers will hold meeting, Cleveland, Ohio, June 29–July 1, 1942.*

Photo by American Photo Studios

The Cuban Telephone Company Building
In Havana

Public Utilities
FORTNIGHTLY

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The Federals Are Coming

The exact status of Senator McKellar's recent attack on TVA funds lies in congressional conference at this writing. But the author gives us a personalized background of the general feud between the Tennessee Senator and the TVA directors.

BY HERBERT COREY

KENNETH McKellar is the senior United States Senator from Tennessee. He is bulky, high-colored, and vigorous. Mr. McKellar begins his day's work at cockcrow and stops somewhere around midnight. He is a push-over for emotion and choler. When his fellow United States Senators took an afternoon off from their war work to tell him how much they love him on the occasion of his having completed thirty years in Congress, he wept openly and happily, blowing into his handkerchief from time to time. When he loses his temper, and he is very careless with it, the fact is common to the neighborhood. He has the politician's habit of never forgetting a friend or a favor received and has the reputation of paying his debts in full. He is near enough the Scotch highlands in direct descent to remember his enemies, too, and if he does not spend much time on them it is only because he is too busy. He is state-proud and state-loving and has brought home to Tennessee every bit of game he could get between his sights. One of those bits of game was the TVA.

His friends say that for him. Mr. McKellar is not at the moment making much fuss about it.

McKellar is a Democrat, a New Dealer, and a passionate supporter of

the national war policy. He has been called a rubber-stamp for Roosevelt. The charge is at the very least open to examination. He has voted aye on the things President Roosevelt wanted as long as those things were also wanted by Kenneth McKellar. Of late he has not found himself precisely in the presidential groove. The things he has said about the Office of Civilian Defense would have been actionable if they had not been so demonstrably true. He has examined the CCC, which purveys outdoor exercise for young men at governmental cost with a basilisk eye. The National Youth Administration is still spotted where he poured acid on it. He looked at the $600,000 building which was put up on what might be called Washington's town square to house Lowell Mellett's Office of Government Reports and found it not so good. Mr. Mellett is an apple of Mr. Roosevelt's eye. The building project was the product of the presidential brain, according to Mr. Mellett himself. The OGR is, to be candid about it, a pretty efficient organization. Those who want information about the government can usually find it there. But Mr. McKellar glowered at Mr. Mellett.

"You are making this," he said, "the silliest government on the face of the earth."

THE McKellar quotation is from memory and may not be letter-perfect, but it is essentially accurate. The evidence seems to be that Mr. McKellar's rubber stamp is, on occasion at least, dipped in an ink not colored by the New Deal. Inasmuch as Mr. McKellar could sit for the Portrait of a Politician without any change of make-up it may be presumed that his present attitude is due to a shift in the popular thought back home in Tennessee. He was in politics long before the New Deal was ever heard of. The people of Tennessee put him where he has been for thirty years. There is no bulletin on the grapevine that he has any thought of quitting politics. If the voters in Tennessee's rugged hills and on her lovely farms regarded the OCD and the CCC and the NYA and the OGR and the other gold-plated ornaments of the present administration with real affection, the assumption of one stranger is that Mr. McKellar would at least choke down his dissent. If under such conditions he were to cast policy to the winds he would unquestionably listen to the advice of the Red Snapper of Memphis.

Edward H. Crump, the boss of Memphis, is McKellar's nearest friend and his political partner. Mr. Crump is not only boss of Memphis, but the Crump-McKellar coalition, one year with another, controls the state of Tennessee. The present writer is assured by those who should know that Mr. Crump is the author of an excellent city administration. He is extremely practical, also. Sometime ago the Tennessee legislators enacted a law restricting the liberty of municipalities in the issuance of bonds. The prescient Crump amended the bill while it was still in egg to permit the city council of Memphis to pass on the bond issues of Memphis. One recent consequence is that when the Federal government was all set to build a $30,000,000 state hospital in Nashville on condition that Nashville bought the necessary land there was some faltering and delay. Memphis came in with the $8,000,000 required for land buying and got the

hospital. This is cited as evidence that both members of the partnership are in there swinging.

MR. McKellar has been called the godfather of the TVA.

It is true that the names of Senator George W. Norris of Nebraska and various other Congressmen are associated with the actual framing of the TVA bills and their passage through the houses of Congress. This may be due to the Caledonian canniness of the Senator from Tennessee. He seems to have had the idea of the TVA long before anyone else saw what could be done with the rills and rivers under the urging of the Federal Treasury, but he apparently let someone else take the credit. This could not have been an oversight for he has no oversights in stock. He might have reasoned that the scheme would get farther if promoted by more notorious lovers of the Beautiful and Good and that his own association with it might be suspected of an affinity for gravy. Other reasons might be found for his diffidence. In any event it seems established that he had the idea and had it first.

His recent defeat in a tilt with the TVA is a matter of public record. He opposed the building of the Douglas dam, a thirty or forty or fifty million dollar project, so successfully that he held it up for a time. This dam plan is very close to the heart of David Lilienthal, the youngish and flinty chairman of the TVA. It is much closer to Lilienthal's heart than is McKellar by several thousand leagues. Nor is Edward H. Crump a frequent visitor at the Lilienthal fireside. Whether the reader likes it or not, the fact is that patronage is the lifeblood of any political organization.

EXPERIENCE has demonstrated that the voter will follow a job farther and closer than he will an ideal, and when the TVA had been translated from the dream stage into a millions-of-dollars reality both McKellar and Crump looked at it with gleams in their eyes. But they found they had been crossed. Norris had inserted in the original bill a clause outlawing political appointments and the TVA took this at face value. There seems no evidence that Crump and McKellar got so much as a day laborer's job out of the TVA. McKellar kept his record straight so far as his support of the great water-power plan was concerned by voting for the Holston and Watauga dams on the Holston river, but he thumbed down the Douglas dam.

He could do this because he is vice chairman of the Senate Committee on Appropriations. Carter Glass is chair-

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man, but the fine old Virginian does not bother much about it. He and McKellar are close friends and Glass is content to let McKellar run the committee, always reserving the privilege of coming in and raising hell when he happens to feel like it. McKellar had a perfect argument against the Douglas dam, too, and the committee was almost unanimous in supporting him. He was able to show that the Douglas dam would flood 30,000 acres of the best farm land in Tennessee, along with the town of Dandridge, the second oldest in the state. It will drive out of business the several plants of the Stokely Canning Company, and hundreds of men and women of the French Broad valley will lose the seasonal job of packing tomatoes, on which they have relied. The loss of tax revenues will compel the merger of Jefferson county with some other county. McKellar also urged that the Douglas dam cannot be completed in time to be of use in producing power for war use.

"The Holston and Watauga dams can be built in time," he said, "but Douglas dam cannot."

He might be in error there. Engineer J. A. Krug, in charge of power for the WPB, says that Douglas will be finished and its turbines in by May of 1943, and no one thinks the war will be over by that time. If Krug is right, and he has a record of being right, this will be the fastest job of dam building on record. This speed will be possible, Krug says, because the cranes and scoops and engines now in use on the Holston and Watauga dams will be moved 25 miles down stream to Douglas. Ordinarily the assemblage of such heavy machinery is a work of months, almost of years, but in this case hardly a day will be lost. The turbines for Douglas will be the turbines now in construction for Holston and Watauga, for the Douglas dam, Krug says, is the finest site in the TVA territory. It would have been built long ago, except that the TVA thought best to let that sleeping dog lie. After all, the destruction of 30,000 acres of rich land is not to be undertaken casually.

"But now," says Krug, "we've got to have it."

McKellar certainly thought that Lilienthal had been delivered into his hand when the Douglas dam scheme was first opened. The other operations of the TVA had been accepted by Tennessee because they brought spending money into circulation in incredible sums. Farming land was inundated, it is true, but some of the farms were only valued at $500 for tax purposes and the state felt that the money spent would outbalance the disadvantages. The injured localities, too, had comparatively small voting power as compared to the hungry thousands who shared the spoils. Holston and Watauga dams could be accepted because they would flood few acres. But the loss at Douglas was really tremendous. The state supported McKellar in his struggle against it.

But Lilienthal won.

At this point the story begins to assume a national significance.

It may be that when Lilienthal first broached the idea of building the Douglas dam he had a talk with McKellar. It may be that he did not. It may be that he was convinced by McKellar's argument that the state of

NRPB Plans for Power Production

"THE NRPB plans for power production and flood control in the future, under Federal direction. The states will be invited to join, of course, but any student of the board's report will conclude that when it gets under way the states must do as they are told. The Flood Control Act of 1941 enables the Federal authorities to carry on—'without overstepping the areal or functional limits of a congressional authorization'—which must mean that when it passed that act Congress relinquished its authority in certain matters."

Tennessee would suffer an enormous loss in tax revenue if the 30,000 acres were submerged and that this loss would go on forever, whereas the thirty or forty or fifty million dollars which might be spent for the building would slip through careless hands and be lost. It may be, too, that McKellar urged again that the dam could not be built in time to aid in the war emergency, and was not needed anyhow. It may be that McKellar thought that if he were licked about the dam building some little redress might be found in the sale of the 30,000 submerged acres. He would have these lands appraised by juries, presumably made up of friends or residents who appreciated the true value of the land. The TVA insisted that the valuations should be made by a commission, the members of which might be drawn from distant parts and might even be familiar with land valuing on a large scale. Some one at this juncture pointed out that when the Great Smoky national park was created juries valued some of the hill farms at $140 an acre. Senator McKellar is not known to have protested this statement. After all, the Great Smoky park is another one of his babies.

None of his constituents is on record as protesting against the high cost of Great Smoky farm land to the Federal government. It may be that Lilienthal said he would let the whole thing drop, pending another nice long talk with the Senator. It may be that he said nothing of the kind. But it is believed rather widely by those who might be in McKellar's confidence that the gentleman from Tennessee thought he had blocked the Douglas dam building.

THEN Lilienthal circumnavigated the Senator. He had a bill introduced for the dam building, without any further talk with the Senator. This was either a tactical error or it was not. It was a tactical error on Lilienthal's part if he did not have the strength to put that bill through both houses. He had incurred the vociferous anger of one of the most powerful Senators. Those who care to read the encomiums of McKellar on the occasion of that thirtieth birthday to which allusion has been made will discover that his fellow Senators think he is an easy man to do business with. When he says he will do a thing he does it. The implication is that his fellow Senators play the game the same way. He could depend on their backing against this interloping Lilienthal, who had dared to bypass a Senator who was interested in a matter pertaining to his own state.

It was not a tactical error on Lilienthal's part, however, if he had the strength to put the McKellarless bill through both houses. If he had that strength then McKellar—and the Red Snapper—would not merely have sustained a defeat. An evidence would have been produced before the eyes of the voters of Tennessee that the TVA, a Federal corporation, was more able to get results than were the Senator and the Red Snapper. The TVA has set up what has often been called a 7-state empire. What it could do in Tennessee it might be able to do in the six other states. There are strengths and allegiances that overlap state lines. Politicians in the states have always bitterly resented the intrusion of the Federal power in their operations. They have always made use of the Federal power, of course, in the diverse methods known to politicians. They have in return permitted the Federal power to make use of them. The more or less recent transactions in the state of Louisiana might be offered in evidence. But no politician in a state can permit his organization not only to be bossed but to be pushed around in the careless Lilienthal manner, for that means that the Federal power might become the master element in the state. It must at least be bargained with in such a case. The fable of the cold camel and the warm tent at once leaps to the memory. It was the Arab who was eventually pushed out.

MCKELLAR knows the Tennessee voter will reflect that Crump and McKellar are but transients whereas the Federal government goes on forever. Under its plan the TVA can, if its officers were willing to descend to skulduggery, punish a recalcitrant municipality by changing the buying and selling prices of the power bought from the TVA. One by one the privately owned power companies have been obliged to knuckle under to TVA. The offending municipality could not counter a TVA move by buying from a TVA competitor because there is none such. The TVA spends millions of dollars in its 7-state empire. It has affiliations in Washington with various branches of the Federal government. It has the support of the advocates of public ownership. Even if there were to be a change in the political complexion of the Federal administration, it might be years before the public ownership Camorra could be rooted out. Stephen Raushenbush will be quoted in support. Mr. Raushenbush has been personally

rooted out, but in a very thoughtful book he wrote some years ago he said:

"One good man with his eyes, ears, and wits about him, inside the [Federal] department, can do more to perfect the technique of control over industry than a hundred men outside."

SAN Francisco has insisted on the right to dispose of its Hetch-Hetchy power to suit itself. Public ownership zealots now led by Secretary Ickes of the Interior Department have carried that issue to the polls eight times and have eight times been licked. But Ickes has to win only once. Bonneville and Grand Coulee are in northwestern politics. There are scores, perhaps hundreds, of other Federal enterprises, projects, hopes, and ideas in the various states, each of which has more or less political power and which when formed into a pressure group has enormous power. No one who knows the REA will question its political power and its political aims. Only the fact that we are in a war restrained the REA from setting up a southwestern network that could be an anchor for an expanding network of networks, in which each of the innumerable units deals directly with rural voters. That it is the plan of the Federal administration to move toward a further centralization of political power is stated by the National Resources Planning Board, which has been a pet of the President's. In its handsomely printed recent report—55 cents at the Public Printer's—it makes this clear.

The NRPB plans for power production and flood control in the future, under Federal direction. The states will be invited to join, of course, but any student of the board's report will conclude that when it gets under way the states must do as they are told. The Flood Control Act of 1941 enables the Federal authorities to carry on—

"Without overstepping the areal or functional limits of a congressional authorization—"

Which must mean that when it passed that act Congress relinquished its authority in certain matters.

THE board plans watershed authorities, flood and power authorities, forest and grazing and soil conservation authorities, under the direction of 50 Federal agencies, at an initial annual cost of four billion dollars. No voter will contend that this sum is hay. When McKellar opposed Lilienthal and the TVA he knew precisely what he was doing. He was striking a blow for freedom for the McKellar-Crump machine—and the reader should remember that whether he likes it or not American politics have been managed on the McKellar-Crump plan—and he could not have been oblivious of the fact that Federal power on the TVA

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plan is moving into politics in many of the other states. When he struck it was against the federalizing system as much as against TVA's Tennessee power.

He did a good job. He said the NYA was making "mollycoddles" of our American youth. He said that "no one knows how TVA spent its $21,000,000 last year" and that it was wasteful and extravagant. He insisted there is no reason why TVA should not make an accounting to the government, as "other government departments do." He opened fire on a broader front when he reported that the travel cost of Federal officers last year amounted to $147,986,000. He called on his old friends in the Senate and he started a brush fire in Tennessee. His Appropriations Committee stayed with him manfully. But in the end he was defeated. President Roosevelt wrote him a letter, in which he insisted that Douglas dam must be built because it was needed for war production and McKellar capitulated. Being a wise man in politics he must have known that he could not have held the committee against the President's power. Congress has given the administration almost every other thing it has asked, and the war emergency made the President's argument irresistible.

THIS may not be a precedent. Perhaps other political powers in other states may be able to preserve their autonomy against Federal pressure. But when the National Resources Planning Board talks of spending four billion dollars on its plans to do good almost everywhere, an outsider's guess is that the rest of the states will be as subject to argument as was Tennessee when the TVA first moved in.

There are few things in this world more persuasive than four billion dollars, unless it might be eight billion dollars.

Coöperative Enterprises

"COÖPERATIVE *enterprises are altogether legitimate and compatible with a free enterprise system as long as they themselves remain free, as long as they stand on their own bottoms in a competitive system. The moment they receive government assistance of any sort which is not open to all other persons and organizations operating in the same field, they become socialistic in nature and purpose. Any government which extends them special favor, moreover, itself undergoes a fundamental change in the direction of collectivism.*"

—EDITORIAL STATEMENT,
The Wall Street Journal.

The Good Neighbor Policy Succeeds in Cuba

Beneficial result of friendly attitude on business relations—Effect of the war on the utilities and on industrial conditions generally—The railway, bus, telephone, and power situation.

By LOUISE C. MANN

For many years Sumner Welles has been struggling to replace Dollar Diplomacy with the Good Neighbor Policy in Latin America, against the grumblings of hard-headed business men who felt that their prerogatives were being usurped. Assisted in more recent times by Nelson Rockefeller and Carmen Miranda, the Good Neighbor Policy has achieved Hemisphere Solidarity (with Argentinian and Chilean exceptions) and has in some cases, such as in Cuba, been totally successful.

Cuba is one of the best Latin friends we have at the present time. When we were treacherously attacked at Pearl Harbor, she was almost the first Central American Republic to declare war on the Axis. Cuba's friendship is not one of beautiful political protestations but of actual deeds. The night of December 7th, spontaneous mass demonstrations were held in Havana, so that public opinion became crystallized in favor of a unanimous declaration of war against Germany, Japan, and Italy.

In order to understand the importance of political unanimity in Cuba, it should be explained that there are numerous political parties vying for power, so that it takes a strong man, almost a dictator, to hold the country together and govern it efficiently.

The island recently held a congressional election, about which the *Havana Post* said, "Very few, if any, elections in Cuba's republican history have awakened so little interest among the country's voters, owing principally to the fact that there is no vital or important issue at stake at the poll. All of Cuba's political parties, both majority and opposition, supported the foreign policy of President Batista in declaring war on the Axis and otherwise coöperating in the war effort of Cuba at the side of the United States."

CRITICS of the Good Neighbor Policy try to point out that it was to Cuba's own selfish interest to coöperate in Hemisphere Solidarity, because her financial future lies in selling her sugar to the United States. The proof of this allegation is the fact that she immediately contracted to sell her entire 1942 crop to the United States at a price of 2.65 cents per pound, which was a 100 per cent increase over the 1.28 cents prevailing in 1941.

This transaction may look selfish until the facts are examined. The war in the Pacific has made the United States almost completely dependent upon Cuba for sugar, not only for household use but for the manufacture of alcohol, the base of smokeless powder. If Cuba had held out for 5 cents a pound, she would certainly have obtained at least 4 cents, or there would have been a revolution by American housekeepers if such bargaining had delayed deliveries. As it is, the retail price of sugar in Havana of 7 cents a pound is higher than our own.

Far from being selfish, this sale of the Cuban sugar crop at a reasonable price is one of those rare deeds of international coöperation which makes us realize that there are still remaining some ideals worth fighting for.

BUT what have international friendship and the price of sugar to do with public utilities in Cuba? The answer is, everything. According to the American Chamber of Commerce in Cuba, Canada is the only country in the world in which the United States has more money invested than in Cuba, even though our original investment of over a billion dollars has shrunk to around six and one-half millions.

Although the largest American interest are, of course, in sugar and the connected shipping, banking, and other allied lines, the public utility concerns are of vital importance to American investors. The Compania Cubana de Electricidad is the crown jewel in the diadem of the American and Foreign Power Company; the Cuban Telephone Company is controlled by International Telephone and Telegraph; the Havana Electric Railway Company, although now a Cuban company, holds its stockholders' annual meeting in Maine; and the Consolidated Railways of Cuba was financed in New York. About the only utilities without American connections are the government-owned local telegraph and the English United Railways.

THE financial future of an American utility in a Latin American country depends not so much upon its balance sheet nor the state of general prosperity, as upon the attitude of the Latin government toward foreign capital. In the past, the safety of invested capital has usually been in inverse relation to profits; that is, if an American company was coining money, the Latin government either made moves toward expropriation or passed legislation designed to prevent those profits from leaving the country; but if the foreign firm was running a deficit, the local politicians were perfectly willing to let Wall Street bear the responsibility.[1]

At the time of the Mexican oil expropriation, the future of foreign util-

[1] See the author's Latin American series in PUBLIC UTILITIES FORTNIGHTLY: Mexico—June 24, 1937, Vol. XIX, p. 16; Argentine—Oct. 27, 1938, Vol. XXII, p. 556; Chile—June 22, 1939, Vol. XXIII, p. 836; Brazil—Aug. 3, 1939, Vol. XXIV, p. 143.

ities in Mexico looked black, indeed. Now, however, all that is changed. Owing to the present emergency, even Mexico has changed her policy toward American business interests, including the public utilities.

Cuba, on the other hand, has always been more friendly to American interests than have some of the South American countries, although she has not always been 100 per cent as she is today. This friendly attitude of the Cuban government is important, because the American investment in Cuban utilities is one of the most profitable utility investments in Latin America.

ABOUT the only legislation that is really nationalistic in force in Cuba at the present time is in regard to labor, 50 per cent of which employed in each category by any one firm must be Cuban. Foreign technicians may be imported if no capable Cuban is available, provided at the same time that a Cuban be trained also to fill the position eventually. Actually most foreign companies employ 90 per cent or more Cubans. All new employees must be native born Cubans and not naturalized citizens, because Cuba is so overcrowded with European refugees that labor competition has become severe.

Even though the Cuban government is friendly toward the United States, what is its attitude toward private capital in general? Fortunately it has never held the quaint idea that a state of Utopia can easily be achieved by government ownership of public utilities.[2] On the other hand, they have made the discovery, which they probably learned through watching the New Deal at work, that the laboring people cast the most votes.

The new Cuban Constitution, therefore, stipulates in Articles 66 and 67 the payment of forty-eight hours' wages for forty-four hours of work, and also provides for one month's vacation with pay for every eleven months of work in each natural year.

In addition, in November, 1941, all wages were increased from 10 to 20 per cent, and were more recently given another boost, because the cost of living had increased 60 per cent since 1940, according to an estimate by the Ministry of Commerce. Before this first governmental decree, many companies, including the electric company, had already raised wages on their own initiative, so that this double raise has made a higher percentage increase in wages than in the United States.

[2] The Cuban government is authorized to expropriate and seize public utilities for national defense or maintenance of national production for the duration of the war.

¶ "CUBAN *corporations . . . have not yet been annoyed by the heavy increase in taxation which are on the verge of destroying the profit motive in the United States. While sales taxes and other taxes have been levied on account of the war, there is as yet no excess profits tax. What the future holds is, of course, uncertain, but present prospects are that Cuba will not be faced with such financial problems as have presented themselves in the United States, for the simple reason that we are doing her financing for her.*"

SUGAR workers are ruled by separate legislation. Their wages are fixed by a sliding scale which is tied to the price of sugar; but recently they were given a blanket increase of 50 per cent.

The price of sugar is the business barometer of Cuba. The 100 per cent rise in price together with the wage increases mean that for the first time since 1929 thousands of Cubans will have enough to eat and thousands more will be able to afford simple luxuries. Consequently the spirit of optimism pervades the country and business is humming.

The boom is not only in sugar, but almost all other exports are increasing, particularly those of strategic minerals, meat, and hides. The balance of payments is so greatly in Cuba's favor that early in 1942 the peso was selling at a premium over the American dollar, and was the only foreign currency to have a higher exchange value than our own.

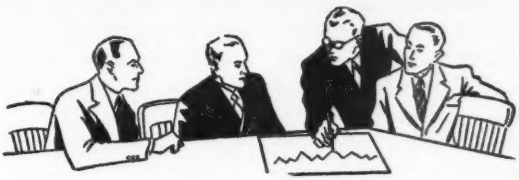
Other factors, however, contributed to this rise in the Cuban peso, the principal one being a shortage of actual currency. Cuba has no central bank of issue, but has $90,000,000 of her own currency in circulation, based on silver bought and coined in the United States. In addition, the American dollar is legal tender in Cuba, so that more money is brought in from the States as needed.

AT the beginning of the present grinding season, higher prices, higher wages, and increased business activity suddenly caused a demand for more currency, which had to be transported from the United States at great expense by airplane because of the submarine menace. Now that enough money has been imported, the difference in value between the two currencies has disappeared. Cuba is also planning to issue an extra 25,000,000 or 30,000,000 pesos to be backed by gold or dollars to cover the greater demand for money.

The importance of this situation to the foreign-owned utilities is that although in 1939-1940 the peso sold at a discount, at present there is no exchange problem in withdrawing profits or bond interest from Cuba, as there is in the South American countries with depreciated currencies and blocked credits. In the past, this question of foreign exchange payments had been a political football in several of those countries, and had formed a method of indirect expropriation difficult to combat through the regular diplomatic channels.

The absence of these two difficulties, that is, lack of foreign exchange and political antagonism, are the real reasons why the American utility companies (with the exception of the transportation companies) in Cuba are so profitable. A few adverse factors, however, enter into the present situation.

For example, the two second industries of Cuba, tourists and tobacco, are entering a declining phase. Since all passenger ships to Cuba have been discontinued, only a few hardy travelers brave the priorities and visit Havana by airplane, at the risk of losing their return reservations to the Cuban Navy or to arrested fifth columnists with their police escorts. The gay capital, geared to an influx of from 126,000 tourists in 1941 to 178,496 in 1937, the banner year, is doing its brave best to entertain the 6,000 plane passengers who arrived the first two months of 1942; but the casinos and bars are empty and an assorted collection of taxi



Price of Sugar As Business Barometer

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drivers, guides, rumba dancers, Cuban beauties, and hotel waiters are out of work.

THE tobacco industry is not so badly hit, because raw exports in this hemisphere are holding their own; but the big market for cigars, England, is completely out of the picture, and one of the large cigar factories has recently closed down, while others may shortly follow suit.

Furthermore, the utilities face the same problems which they do in the United States. Costs are rising while rates remain fixed, and new expansion is prevented by priorities on equipment. Generally speaking, the Cuban companies obtain the same allocations as our own, but they have hopes of preferential treatment on account of the American policy of Hemisphere Defense.

These hopes, however, have not yet been fulfilled because of the shipping shortage, which is becoming more acute every day since the German submarines invaded the Caribbean. Ships must proceed more slowly and under convoy. Furthermore, some of the sugar ships are in such a hurry to load sugar that they sail from the United States empty handed, while the Cubans are faced with a growing shortage of merchandise.

Cuban corporations, on the other hand, have not yet been annoyed by the heavy increase in taxation which are on the verge of destroying the profit motive in the United States. While sales taxes and other taxes have been levied on account of the war, there is as yet no excess profits tax. What the future holds is, of course, uncertain, but present prospects are that Cuba will not be faced with such financial problems as have presented themselves in the United States, for the simple reason that we are doing her financing for her. We have already lent Cuba $25,000,000 through the Export-Import Bank, and are lending her a small fleet of naval vessels on Lend Lease.

We will now pass to a brief review of the various companies under consideration. Of the two railroad companies, Consolidated serves the eastern half of the island with 947 miles of standard-gauge track and United the western end. Railroad revenues depend upon the volume of the sugar crop. Ever since the quota system was introduced, therefore, they have been running large deficits; but now their revenues are increasing so much faster than their costs that their balance sheets are beginning to show profits before amortization, bond interest having been discontinued by the Cuban moratorium.

The most prosperous utility company is the Compania Cubana de Electricidad, which supplies electric power to 90 per cent of all Cuba and gas to the city of Havana. It has 3,000 employees, serves 279,000 electric and gas customers, has an installed capacity of 122,712 kilowatts, and during the year 1941 generated 381,385,000 kilowatt hours of electrical energy and 821,000 thousand cubic feet of gas. Its peak load is in the summer, because of the extra demand for refrigeration and air conditioning, while during the sugar-grinding season, which occurs in the winter, most of the large sugar mills generate their own power which also supplies the residences of their employees living in the vicinity of the mills.

The company has had a consistent growth particularly in Havana and its suburbs. Expansion has kept pace with demand until at the moment the company is ready to supply all the requirements of the present increased business activity; but any further demand in the future will be met with difficulty due to equipment shortage.

In 1936 domestic rates were established on a sliding scale from 9.35 cents to 2 cents per kilowatt hour. The rates are approved by the public service commission, a branch of the Communications Department of the Cuban government. The members of the commission, including the president, who is the Minister of Communications, have other occupations, and merely give their spare time, of which they have very little, to this job. For this reason it would be difficult to secure any upward revision of rates in case a severe rise in costs or inflation should make such action necessary. The public service commission is not hostile to the vested interests, but simply uninterested.

The American and Foreign Power Company purchased the Havana Electric Railway, Light and Power Company from Speyer and Company in 1926, but since the electric railways proved to be unprofitable they were detached in 1927 and organized into a separate company, the Havana Electric Railway Company, which operates street railways in Havana, Camaguey, and Santiago. These last two are running at such a loss that Havana Electric would like to get rid of them in a similar manner, but has so far been unsuccessful.

It has been the usual bus competition which has ruined the street car company, but from now on it appears that the shoe will be on the other foot. Due to the shortage of tires and rationing of gasoline, 60 or 70 busses have already been laid up.

The bus service has consequently deteriorated so greatly that there is a returning trend toward trolley cars. Not only are there fewer busses, which are

also more crowded, but since the drivers know that they will soon go out of business, they have become rude and careless. There has therefore been an alarming increase in the number of bus accidents, which has been another factor in the return to favor of the street cars. The resulting increased revenues, however, have been just about offset by the wage increases referred to above.

The 5-cent fare is strictly enforced, and is maintained by bus competition. There is no one large bus company, but any one who wants to own a bus can buy one and run it, most of the owners operating fleets of from 3 to 10 busses, which combine into coöperatives to obtain a bus route. Regulation is therefore difficult as to enforcement of both the labor laws and safety regulations.

THE safety laws are peculiar anyway. If the bus passenger is a man, the bus merely slows down, and he hops on or off while the bus is in motion. If the passenger is a woman, however, the bus must come to a complete stop. Since the main purpose of a bus driver would appear to be to drive as fast as possible rather than to collect more fares, a lone woman standing on a street corner has a very remote chance of boarding a bus, if the driver is going at a good clip of speed.

If a lady, however, does manage to sneak aboard a bus, the procedure of getting off is as follows: She catches the attention of the conductress (who is sometimes young and beautiful but more often elderly and sour looking) by holding up the forefinger and making a hissing noise, "s-s-s-s." Then the conductress rings the bell three times and the bus comes to a complete stop so that the lady can descend. When the passenger is a male, however, two rings signal the driver to slow down so that the man can jump off. Cuban busses are not for the lame and the halt, any more than are our subways.

Ladies have only ridden in busses in Havana since 1935, when there was a street car strike of forty-seven days, because they formerly considered that they met objectionable people in busses. The only objectionable men I ever met, however, were the drivers who refused to stop for me, while if I did manage the acrobatic feat of getting aboard, a polite gentleman always gave me a seat, an event which never happens to me in the United States.

THE other important Cuban utility is the Cuban Telephone Company, one of the companies associated with the International Telephone and Telegraph Corporation, which operates the

¶ "THE *war in the Pacific has made the United States almost completely dependent upon Cuba for sugar, not only for household use but for the manufacture of alcohol, the base of smokeless powder. If Cuba had held out for 5 cents a pound, she would certainly have obtained at least 4 cents, or there would have been a revolution by American housekeepers if such bargaining had delayed deliveries. As it is, the retail price of sugar in Havana of 7 cents a pound is higher than our own.*"

local and long-distance service throughout the Republic. It has at present 61,916 telephones, of which 57,183 are in the city of Havana, an average of 8.5 telephones for each 100 inhabitants.

Local telephone rates in Havana were fixed in 1909 and have not been changed since. An unlimited private residential line costs $5 a month, and a 2-party line is $3.75.

The company has 2,401 kilometers of aerial and subterranean cables with a total of 293,322 miles of conductors, and 24,382 miles of long-distance lines. The 138,986 posts on which the telephone wires run are of jiqui and other hard native woods.

Besides the submarine telephone cables that connect Havana with Key West, the longest and deepest in the world, Cuba at present enjoys radiotelephone communication with the United States, Canada, Mexico, and with 53 European countries, as well as with the West Indies, Central and South America, the Pacific, and Hawaiian islands.

The above statement was prepared for me by their public relations officer. When I questioned whether it still held true in war time, I was assured that it did. From personal experience, however, I can assure you that "enjoys" is not the right word to use. Most of the calls were consummated at 4 A.M. Furthermore, all telephone conversations between Cuba and the United States are censored and recorded at the American end. If either party mentions the weather, the service is immediately disconnected.

THE power for the telephones and the electric railways is generally supplied by the Compania Cubana de Electricidad, for which it is dependent upon fuel oil or coal. Havana used to use coal entirely, but changed over some of its boilers to oil last year. The oil has been coming from Venezuela via the refinery at Aruba; but since the shelling of Aruba and the sinking of Venezuelan tankers, the present source of oil supplies is shrouded in the secrecy of censorship.

Oil or coal must be kept flowing, however, so that electricity will be produced which will keep the sugar mills grinding which will send sugar and molasses to the United States to make alcohol so that we can win the war. For this reason the defense of Cuba is of paramount importance to us, and it was to facilitate this defense that Cuba entered the war.

She has a well-trained army and a large police force composed of ex-soldiers. This army will not sail to the Philippines, but will guard the sugar mills against sabotage or invasion. The Cuban Navy until recently consisted of only two ships; but the United States is sending her more ships on Lend Lease, and training the Cuban naval personnel to guard their own coasts. The Good Neighbor Policy has at last been successful, and Hemisphere Solidarity in this case has been achieved.

¶ "THE *American people are paying a pretty price today for dabbling with the theory of scarcity—we are all going to have to pay for our little excursion down the road of regimentation.*"

—WALTER D. FULLER,
President, Curtis Publishing Company.

Horse Trades in Steel Rails In War Time

Abandoned yesterday, and often covered up, steel rails are now being swapped for franchise releases —city officials need the rails for construction jobs, and take them to defray paving costs. That is, if the regulating officials haven't frozen them in place, for possible emergency transportation.

By JAMES H. COLLINS

You can call it priorities, or allocations, or war adjustment, or just plain horse trading—it is going on all over the land, and here is a sample:

One of the Los Angeles street railway companies substituted motor bus for rail service along a certain street. The change was made with the sanction of city and state officials. The tracks were left in place.

The city proposed repaving that street, and under its franchise the railway company was obliged to pay for paving between the tracks.

When repaving was planned, the "phoney war" had begun, and old rails were still junk. They were a liability and not worth enough as scrap steel to pay the cost of taking them up.

But suddenly the war became real, and steel was cut down for civilian uses. The city had various construction jobs under way that needed reinforcing steel, and wanted to complete them before war shut them down completely.

"How would you like to take the rails for your construction work," suggested the street railway officials, "and cancel our part of the paving bill?"

City officials studied that proposal from every angle. The value of the rails, as metal, would not cover the paving costs. If they were accepted, it canceled the railway company's franchise obligation to pay for paving.

However, the scarcity of steel and the cost of delay on projects under way were the determining factors. The city accepted the rails instead of cash,

on condition that the company take them up and deliver them for heavy reinforcing material at a specified construction project.

In this trade, there was a sequel—while the rails were being delivered, the city unexpectedly got a shipment of reinforcing steel, and they were therefore not used.

However, in these times, a ton of steel rails is 2,000 pounds of scarce material that may come in handy nobody knows where—and that deal involved 410 tons.

THESE steel rail transactions come nearer horse trading than anything else with a war definition, because each deal is different. Men sit down at a table and bargain for the best arrangement, the street car company on behalf of its stockholders, bondholders, and threadbare revenues, and the city for the taxpayers, and its public improvement program.

The first step is a job for the legal departments—reading the franchises to see what they actually cover in a case of this kind. And it's like rummaging in an old attic.

For some of the franchises run back to horse-car days, and the ghost of the horse arises in the present horse trade.

One Los Angeles franchise now under discussion runs back to a period when a mule hauled a bobtail car up a hill, and then rode down on a trailer as the car coasted to the bottom.

Believe it or not, street car franchises were once profitable, and eagerly sought, and bought with bribes by our grandfathers, in the Shame-of-the-cities era, and here they are, documents to be closely studied for clues as to what is to become of the abandoned tracks, and who is to keep on paying the paving bills.

Sometimes the paving bills are covered in franchises granted when the street car company agreed to pave between the tracks because its horses actually wore out that paving.

THE horse disappeared, but the franchise went on, and paving was required by the city, nevertheless—an old Spanish custom that even governed the writing of franchises for new streets that had never known horse cars. Traction attorneys pointed out that the company's operations imposed no wear and tear on streets, but city officials exacted their ancient rights, and franchises continued to be written that way, because they were still profitable.

While they strictly preserved past rights, franchises seldom peered into the future. They sometimes ran for ninety-nine years, and carried dire penalties for failure to provide regular service. They were reinforced a little later by regulatory commissions to adjust fares. But nobody seems ever to have asked, in a wildly imaginative mood, "Suppose this kind of transportation is superseded by something different—what then?"

That is the big question today. The unimagined future has arrived, the motor bus has been sweeping rail lines out of existence the past five years, and both utility and city officials want an "out" on tracks, and what goes with them. But the old franchises are generally silent.

Figures gathered last year by the American Transit Association revealed 260,000 tons of abandoned trolley tracks in 89 cities, with officials

ODT Freezes Rail-to-bus Conversion

THE Office of Defense Transportation on March 25, 1942, issued a general order prohibiting local transit companies from substituting bus service for street car or train service on existing rail routes without special authorization by the ODT. This order, however, does not affect the removal and sale of rail trackage already abandoned.

seeking light on what was to become of them. Before war complications, that represented probably half-a-thousand separate horse trades under way, and, with war, the trading has become more complex.

THE scrap value of the rails would seldom cover the cost of taking them up, and so various bargains were struck.

In some cases the transit company agreed to remove them, and the city paved the right of way. It was found most convenient to lift the rails and leave the crossties in place, either the city or the company paving the slots that were left. Where franchises bound the company to pave to the end of the franchise, a money payment was often arranged, the company handing over so much money to be released from its obligation.

Again, the deal provided for leaving the rails in place, and paving over them, with various arrangements covering future paving obligations and cost of paving. This usually raised a slight hump over each line of rails, but it was not bothersome to motor traffic, and the rails gave some reinforcement to the pavements. By the time the wooden crossties had rotted away, city officials reasoned, it would be time to repave the street in toto.

In still other cases, the rails were left "as is," while bargaining went on—and this was to lead to adventure.

When war shortages began to be real, when leaders of industry solemnly warned that their activities must go on or the country be periled and got no steel, when city officials protested that important works must be completed, and likewise got no steel—when the country woke up to the fact that steel was rationed because there was no steel for much besides tanks, ships, and planes, then those abandoned rails took on new value.

Not in money—the price of junk was pegged, and they brought no more dollars, and cost just as much, or more, to lift.

They took on the value of the horseshoe for want of which the horse might be lost, and became a matter of barter when utility men and public officials discovered their value at about the same time.

The old rails out on Commercial avenue, which citizens protested were an eyesore and an accident hazard, suddenly underwent a presto-change! While the city engineer was wondering whether the WPA could be induced to take them up, as junk, they turned into reinforcing steel for a heavy construction job.

"You know, I've been thinking over what you say about those old rails," he phones the transit people, "and this war situation seems to be more serious—"

Utility stockholders got interested. Heaven only knows why, because generally the last dividend was paid in Father's time. But hope springs eternal, transit officials were spurred on to make a deal in abandoned rails, even bondholders got interested, and proposals were made on their behalf to improve the utility picture.

Horse trading was active at the end of the year, and then Pearl Harbor struck a new note.

"Don't take up any more rails—hold everything!" warned regulatory officials in states with big war plants. "We may need them for transportation of workers."

Suggesting that, swift as have been the changed viewpoints about rails the past two years, the changes immediately ahead will be swifter.

Less than five years ago, cities began changing from rails to rubber, joyfully celebrating the passing of an era. In many communities the rails were torn up. Capacity for building new street cars is now said to be only 2,000 yearly.

Through the latter half of 1941, it began to be conceded that new automobile production might have to be curtailed—but that there would be enough new passenger cars for "the duration." Nobody said anything about motor bus production being curtailed. That was a period of eloquent arguments for the indispensability of the Jones Manufacturing Company's products, no matter what they happened to be—touch that industry, and you destroyed national morale.

Since Pearl Harbor, the argument has been with events; we have brought home to us, in our own garage, the truth of Henry Ford's saying that only rubber made the automobile possible, and as we calculate the remaining mileage left in our tires, and adjust our daily routine to fewer deliveries by the grocer, the milkman, and the department store, we study the war production problems brought by Japan's conquests.

Here in Los Angeles, a community that grew on automobiles rather than trolley service, we find that our war plants have grown on tires. Where, in the last war, factory workers crowded into towns like Bridgeport, occupied every house and vacant room, and spread out on trolley lines to the five or ten miles that they ran, in Los Angeles the employees of plants like Lockheed, in Burbank, drive from 18 to 50 miles to work, and a few drive 100 miles. The war worker has been able to avoid

congestion in living quarters, has generally bought a home far from his job, is content to drive as long as the family is happy.

"One reason we came out here," he often says, when quizzed, "was that back in the East the family was always squawkin' about where they had to live, and the neighbors they lived with."

As defense employment increased through 1940 and 1941, traffic tangles arose at points near factories around the hours when shifts were changed, and one of the familiar sights was the lone workman going to work in his second-best car, hundreds of lone rangers who, with the necessary freight traffic to defense plants, helped to increase the traffic accidents.

Now, the lone rangers are doubling up to ride to work, motor bus lines are being discussed if not yet established, and rail transportation is talked about as a possibility.

During the two years of expansion in defense industries, southern California had great building activity, with the greatest emphasis on $2,500 to $5,000 homes for factory people. This construction was purposely scattered to avoid building future "ghost towns," and generally the public officials and bankers thought they had done a good job of emergency housing.

Now, with automobile transportation disrupted, it is found that the war worker ought to live closer to his job—six miles has been set as an average.

An unforeseen factor just beginning to develop, and due to cause further radical changes the next few months, is the drafting of young men from the war factories, and their replacement by older men and women. The Army says to the war industries, "You have taken the cream—and now we must have the cream."

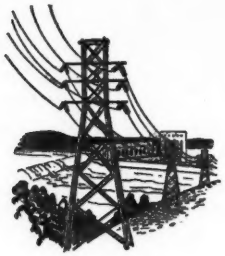
Already, in Los Angeles, older men are being trained for aircraft and shipyard jobs; women and girls are training for tasks on the hundreds of accessory products needed in aircraft; people are being forced into the factories as the distributive trades are curtailed—many an automobile salesman of yesterday is today gauging shells, or taking a special training course as a ship-fitter.

This change has direct bearing on the transportation problem, because many of the new employees of war plants are residents, with homes. War work may necessitate moving nearer the job, but housing construction is sharply down, and these employees will not need whole new neighborhoods of $3,000 cottages, with complete community services.

So, while the old rails stay in place, their fate is discussed from various angles.

What are they worth in a franchise trade? What are they worth as construction steel, as scrap steel, as potential transportation if cars can be rehabilitated and put back into service, as replacement rails in the event of bombing—?

The steel rail is far from being relegated to the past!



The Fight for the Control Of Public Power

Legislative bills designed to settle the controversy between Secretary Ickes and the congressional public power bloc, revolving around the control and management of the Bonneville and Grand Coulee projects, have, in the opinion of the author, a good chance of enactment.

By ANDREW BARNES

FOUR months ago, Secretary of Interior Harold L. Ickes and the congressional public power bloc were at loggerheads, bitterly divided on the management and control of the public power program.

Secretary Ickes was fighting for vestment of the entire program in his Department of Interior, claiming that it was a proper function of the Bureau of Reclamation. The public power bloc, numbering Senators George W. Norris of Nebraska, Homer T. Bone of Washington, Representatives Charles Leavy of Washington, Martin F. Smith of Washington, was equally determined that Ickes should not control the program. They did not doubt Ickes' enthusiasm for development of a public power program, nor his intention, if vested with its management, of pushing the program with all his vigor and bluntness.

What the public power bloc feared was that the next Secretary would not be a public power enthusiast, would not be an Ickes or a Lilienthal or a Harcourt A. Morgan, and hence would either curb the development of government power projects or neglect the job.

The controversy revolved around the control and management of the immense Bonneville and Grand Coulee projects in the Pacific Northwest.

WHEN Secretary Ickes could not budge the public power men in Congress, President Roosevelt intervened and sought to enlist their coöperation in placing these power projects under Ickes' control. The President failed, and for weeks the row boiled undercover and finally reached an impasse. Immediately after the United States entered the war, the Congress reënacted the old 1918 Overman Act,

authorizing the President, among other things, to rearrange governmental agencies, transfer the functions of one to another, the personnel from one agency to a more desirable job, to make virtually unlimited changes in the governmental structure. At this, the public power bloc realized that the President could, by the stroke of a pen, transfer Grand Coulee and Bonneville to Ickes' full, undisputed control, and no one could complain or block the transfer.

But this did not occur. Subsequently, the President asked public power members of Congress to get together, write a compromise bill that would satisfy themselves and Ickes at the same time.

The negotiations were long and complicated, and involved at least one member of the Supreme Court who had taken an active interest in the power controversy from its inception.

THE result was a compromise which is not wholly satisfactory to Ickes or to those men who wanted to maintain complete independence and local management of the great public power projects in the Northwest. They had regarded Ickes' bid for control of the Pacific Northwest's public power as a preliminary step toward ultimate Department of Interior management of all power projects including the vast Tennessee Valley Authority.

The compromise bill was first introduced by Senator Bone, and subsequently introduced in the House by Representatives Knute Hill and Martin F. Smith of Washington. Back of the legislation is a unanimity of agreement sufficient, if exercised, to bring the bill to passage.

Instead of allowing Secretary Ickes and his department undisputed control over the Northwest power projects, the compromise would create in the department a "Columbia Power Administration," the administrator to be appointed by the President and confirmed by the Senate. The administrator would exercise his powers under "the general direction of the Secretary of Interior." The Secretary would name the assistant administrator and the general counsel, prescribe general regulations under which the administration would develop and market power.

THE administrative features of the bill represent a clear-cut compromise between the position taken by the President and Ickes, that administration should be vested in the Interior Department—and the arguments of the public power bloc, that administration should be local and independent.

Each disputant gave in to this compromise arrangement, albeit somewhat unwillingly. The President possessed the authority to accomplish the administration objective by executive decree, but the public power bloc possessed the ability, in last analysis, to prevent congressional appropriation of money to carry out the power development under a management not to their liking.

Several provisos of the compromise bill are important and far-reaching, not the least of them subsection (h) of § 6.

This provides that the administration may "issue and sell or exchange, from time to time, revenue bonds, revenue notes, and revenue obligations . . . and to use the proceeds thereof for carrying out the provisions of subsection (g) of this section," to provide funds for rehabilitation of properties,

Power to Rearrange Governmental Agencies

"IMMEDIATELY *after the United States entered the war, the Congress reënacted the old 1918 Overman Act, authorizing the President, among other things, to rearrange governmental agencies, transfer the functions of one to another, the personnel from one agency to a more desirable job, to make virtually unlimited changes in the governmental structure. At this, the public power bloc realized that the President could, by the stroke of a pen, transfer Grand Coulee and Bonneville to Ickes' full, undisputed control, and no one could complain or block the transfer.*"

for working capital, and similar purposes. Subsection (g), mentioned in the revenue bonds proviso, authorizes the administration to acquire electric utility systems in Washington and Oregon "by *purchase,* lease, *condemnation,* or donation," and to extend and improve those systems.

UNDER the terms of the legislation, these revenue bonds would be lawful investments for the Treasury, the Reconstruction Finance Corporation, private and public trust funds, as well as for private and individual investors. These revenue bonds would mature in not more than fifty years, could be retired before maturity, and would bear interest and be sold at prices determined by the Columbia Power Administration.

This is by far one of the most important sections of the bill, and its implications are tremendous for it opens up to the Power Administration, free from congressional appropriation and control, a source of uninhibited and ready investment moneys. This section extends to the public power administration the financial system opened up for the public housing authorities, the Reconstruction Finance Corporation itself, and other government agencies which now acquire their money in part from congressional appropriations, and more particularly from banks and other investing institutions.

The administration would be vested with authority to make provision for segregation of power revenues to retire the bonds and pay a reasonable rate of interest on them. But, more important, there is no limitation upon the amount of such revenue bonds that might be

sold, no limitation upon the amount of funds that the authority might raise by marketing its bonds with the investing public.

THIS is the broadest financial scope yet given to any of the power development projects. The Tennessee Valley Authority and other public power developments have been subject to congressional appropriating controls. In a separate section of the bill, the authority's financial independence is further broadened in this language:

> Other provisions of law governing the expenditure of public funds shall not apply to the administration's expenditures or to its contracts, agreements, and arrangements. The Secretary of Interior may prescribe by regulation the administration's procedure for authorizing or approving its expenditures, contracts, agreements, and arrangements; and the Secretary's determination as to whether this act authorizes particular expenditures, contracts, agreements, or arrangements of any kind or class shall be final and conclusive upon all officers of the government.

Thus is intended, by one stroke, to settle for the northwestern power authority the long and bitter controversy which raged between the Tennessee Valley Authority and the General Accounting Office over the audit and supervision of TVA moneys.

WHETHER Congress will grant such broad authority, free of supervision, to the proposed new administration is still a matter of conjecture, but the public power bloc is prepared to urge upon the entire Congress the importance and the necessity of this sweeping legislation.

Now that the schism between the Department of Interior and themselves has been healed, they believe that there is at least a good chance that the legislation can be enacted.

Raid Siren Sound for Wrong Number

"IF you happen to hear what sounds like a far-off air-raid siren in your earpiece, don't be unduly alarmed. You have dialed the wrong number and the siren is the telephone company's new-fangled way of notifying you to hang up and try again"—such were the instructions given telephone subscribers in Baltimore, Maryland, several months ago, when specially designed equipment to provide a third tone for dial telephone users was placed in operation by the Chesapeake & Potomac Telephone Company of that city.

It works this way: If a subscriber improperly dials the first two letters of a central office name, the new tone will be heard. This subdued siren tone varies continuously in frequency, rising and falling at half-second intervals. To get technical about it, the lowest pitch is 200 cycles a second, and the highest is 400 cycles.

Wire and Wireless Communication

REAR Admiral S. C. Hooper, speaking for the Navy Department, last month asked Congress to give the armed forces a veto power over any communications merger, contending that the Federal Communications Commission had "little knowledge of the military requirements and principles involved."

Admiral Hooper appeared before a Senate Interstate Commerce subcommittee considering legislation which would authorize a merger of domestic telegraph companies into one system and consolidation of international communication companies into one system, subject to FCC approval.

Hooper expressed disapproval of permitting international radio communications to be merged with cable companies, asserting that under such a merger "Europeans will once again control radio in addition to the cables." The British, the Admiral said, "own and dominate the cable system," except for certain links. He declared:

> Whatever you decide, we of the Navy Department ask that Congress lay down fundamentals and not turn it over to any one government agency, and at least allow the armed forces to have a veto power in mergers.
>
> I am opposed to the principle of delegating the responsibility of determining fundamental policies underlying the development and organization of our communications system to any one agency of the government, and especially to the Federal Communications Commission, an agency which has so little knowledge of the military requirements and principles involved.
>
> Experience has shown that a nonmilitary commission has very little sympathy with the needs of the armed services, as compared with those of the public, and that these services must rely upon Congress to protect their interests.

He declared that "we know from past experience that the commission is very liable to put its own judgment ahead of that of the armed services regarding what is best for the military effort."

ADMIRAL Hooper urged that for the present Congress authorize only the merger of the Western Union and Postal Telegraph companies, including the cable interests of both. He also asked that if a merger of international facilities were permitted, that it be done in such a way as to assure ownership by United States citizens of all communications properties within the United States and its possessions.

W. L. Allen, president of the Commercial Telegraphers' Union, opposed the merger, contending that "if the industry were properly regulated a merger would not be necessary." He said:

> Under present war conditions, when the maintenance of communication facilities is so vital to the armed forces, we believe it to be a very inopportune time for experimentation with one of the most important industries connected with the war effort, and it is our studied opinion that the entire question of a merger should be deferred, at least until the war is won.
>
> To the employees, a merger would mean that thousands of employees would be deprived of employment through the elimination of duplicate facilities, and there would be fewer employment opportunities for those employees fortunate enough to be retained.

Mr. Allen asked that if a merger were authorized, a prohibition be written into the bill against staff reductions until seven years after it was approved.

Paul Scharrenberg, AFL representative, testified in support of Mr. Allen's statement.

Beverly R. Myles, attorney for the Commercial Cables staff association, recommended that the government take over all domestic and international telegraph facilities.

A. N. Williams, president of the Western Union Telegraph Company, had previously urged enactment of legislation to permit a merger of all telegraph companies, but declared that under the terms of the pending bill any consolidation would be impracticable. Mr. Williams asked the subcommittee to make many amendments to assure that a merger would result from the authorization, if enacted. He said that the following changes should be made in the bill:

A modification of a requirement that domestic telegraph companies must divest themselves of their international facilities before merging.

A modification of proposed labor provisions.

Specific authority to include telegraph operations of the Bell telephone system.

Edwin F. Chinlund, president of the Postal Telegraph Company, made similar suggestions.

Subsidization of the Postal Telegraph Company under strict government control was proposed by the American Communications Association (CIO) as a substitute for proposed merger of Postal and Western Union. Joseph P. Selly of New York, association president, told the Senate subcommittee that if consolidation were deemed desirable it should be effected by government order without abandonment of any existing communications facilities.

Chairman James L. Fly of the FCC, testifying at the subcommittee hearings in support of the legislation, told the Senators that while he did not now advocate a compulsory merger of telegraph companies, Congress might wish to consider mandatory legislation, if that became necessary to accomplish a merger. He asserted that there was "no doubt" of the power of Congress to compel a merger, adding that under existing law the government could take over all telegraph facilities "in fifteen minutes" and merge them.

The FCC chairman said that if, under permissive authority, "the companies do not show a willingness to effect a merger promptly," then Congress would have to decide what to do, and he would like to return with fuller recommendations. Fly rejected proposals from some witnesses that a merger of international facilities be deferred until after the war, contending that both from the point of view of national security and this nation's place in the world communications scheme, an international merger was "definitely more important than the question of what happens to the Postal Telegraph Company."

He termed it "nothing more than a fixation" to argue that in a combined company cables might dominate radio communication to the detriment of the latter, contending that the reverse was more nearly true. He predicted that in a short time, because of radio competition, "you are going to have the cables in pretty much the same fix as you now have Postal Telegraph."

"You are going to have to let the cables go, or you are going to have one company which will be able to keep the cables in operation," he said.

Fly told the committee that unless a domestic merger were effected, Postal Telegraph Company would be unable to continue, and the government would be faced with the alternative of letting it go out of existence or taking it over, which would raise the question of taking over Western Union as well. He urged that the telegraph facilities of the Bell telephone system be included in any domestic merger, asserting that otherwise Congress would be "creating a merged company with the seeds of its own destruction in it."

SENATOR Downey, Democrat of California, opposed the merger legislation, asserting that he would prefer a government subsidy to keep the Postal Company in operation. "What would happen to production activity on the West coast," he asked, "if we eliminated one major system and a bomb eliminated one or possibly both the others? It seems obvious that the danger of destroying communications between, say, San Francisco and Washington would be tremendously increased if the terminal facilities of either telegraph company were permitted to be abandoned. I think we will be a lot safer with an alternate means of communications than with a slightly increased supply of secondary copper which might be obtained through scrapping the Postal system."

Kenneth E. Stockton, chairman of the executive committee of the American Cable & Radio Corporation, asked that if domestic telegraph companies were merged, normal prewar distribution should be used as a yardstick in determining the merged company's division of traffic between international companies.

* * * *

A NATIONAL Broadcasting Company spokesman urged Congress recently to maintain the concept of a free radio in order to permit it "to emerge into postwar days as a strong and vigorous agency for the work of reconstruction." Frank E. Mullen, NBC vice president and general manager, told the House Interstate Commerce Committee that "as an ever-changing art and science radio needs flexibility to permit its normal future evolution."

He was testifying on proposed legislation to amend the 1934 Federal Communications Act and change the FCC's administrative organization, its procedure for handling applications, and its appellate rights and remedies.

Mullen offered the committee the coöperation of NBC in revising or clarifying existing radio law, and added:

> It is clear that regulation, both self-regulation and government regulation, must play an important part in the free and continuous functioning of our broadcast structure. Techical as well as social factors must be evaluated and a clear appraisal made of both the rights and duties of the broadcaster.

Mullen told the committee that "had it not been for the war we would now find ourselves in one of the most important technical developments in radio history." He continued:

> We were on the verge of new services and a new industry through the wider use of the ultra high frequencies in the fields of television, frequency modulation, facsimile, which is the broadcasting of printed material. These new services are certain to exert a revolutionary influence upon our social and economic life in years to come and will raise problems vastly greater than any problem which may exist in radio today.

Mullen maintained that the nation's radio listeners would suffer in their program service by any interference in orderly marketing procedure now offered national advertisers by radio networks.

WILLIAM S. Paley, president of the Columbia Broadcasting System, told the committee that regulation of radio by the Federal Communications Commission "should stop at physical requirements." He said:

> No government agency should ever be allowed to tell the American people what they may hear and what they may not hear. I do not ask that broadcasting be immune to any of the normal laws and regulations which govern and properly govern business.
>
> Broadcasters have recognized from the outset that they must be subject to traffic regulation. We know that a commission has to prescribe physical and engineering standards.

Paley warned, however, that the first and fundamental requirement for radio is that "it shall be kept completely free." He said that public opinion, the competitive factor, and legislative authority of Congress served as a barrier to keep any number of broadcasters from going too far wrong.

The CBS official told the committee that freedom of the air is "at least as important to the American people as freedom of the press."

Neville Miller, head of the National Association of Broadcasters, appearing

before the House Interstate Commerce Committee, said there is great apprehension on the part of the newspaper-owned radio stations over the possible granting of greater investigative powers to the Federal Communications Commission. He expressed this fear before the committee, which is considering the bill by Representative Jared Y. Sanders, Jr., Democrat of Louisiana, to revise administrative procedure of the 1934 Communications Act. Under the proposed changes, the FCC would be empowered to solicit added information about radio stations and the operations of the networks.

The agency recently held hearings on newspaper-owned stations but reached no conclusion on whether they are in the public interest—chief premise of the inquiry.

MR. Miller held that this and other matters of policy should not be left to the commission for determination but "should be formulated by Congress." He said the courts substantiated this contention. He stated:

> While the commission says that it merely wants to conduct investigations to learn the facts, there is great apprehension on the part of newspaper-owned radio stations that the commission will hold that they are against public policy.

The association proposed that a section be incorporated into the 1934 act, stating:

> Nothing in this act shall be understood or construed to give the commission the power to regulate the business of the licensee of any radio-broadcast station, and no regulation, condition, or requirement shall be promulgated, fixed, or imposed by the commission, the effect or result of which shall be to confer upon the commission supervisory control of station programs or program material, control of the business management of the station, or control of the policies of the station or of the station licensee.

John J. Burns, counsel for Columbia Broadcasting System, recently maintained that the FCC could bar newspaper ownership of radio stations without seeking congressional approval if its regulations covering networks are upheld. He told the House Interstate Commerce Committee that these regulations, limiting duration of network contracts with individual stations, outlawing exclusive options on station time, and limiting the number of stations which could be owned by a network were "completely without warrant in law."

Frank N. Stanton, CBS director of research, said the network had laid down a policy barring programs which exalt criminals and glorify disrespect for governmental or parental authority, and had refused to sell time for discussion of controversial public issues.

* * * *

FCC Chairman Fly last month recommended a greater use of private broadcasting facilities by the government without government control of the industry. Mr. Fly spoke from Washington in the University of Chicago's round-table discussion. He said:

> Radio stations should remain in private hands, although some of them may, because of declining advertising revenue, require government aid. But this should not mean that government should assume control of radio at the same time.

Mr. Fly said the government should use radio more intelligently to keep the public informed.

* * * *

THE Northwestern Bell Telephone Company on May 15th withdrew the 15 per cent rate increase for most of Iowa which created widespread controversy when put into effect April 10th. A brief announcement said:

> To our Iowa telephone users:
> In response to the request of the Office of Price Administration, and with the desire to coöperate fully with the national effort to prevent inflation, we have withdrawn the 15 per cent surcharge on telephone rates in Iowa, effective May 15th.

Officials of Northwestern Bell declined to amplify the brief statement. Cecil T. Young, district manager, was asked if the 25-cent discount for prompt payment, discontinued at the time of the rate increase, would be resumed. He said he could not add anything on that point.

Financial News and Comment

By OWEN ELY

Inflation

As government spending and government debt continue to mount at an accelerating rate, the danger of inflation becomes increasingly apparent in all quarters. The administration is taking energetic steps to forestall the menace, but some authorities think that price ceilings may prove ineffective in the end unless broadened to include wages and farm prices. These have escaped effective control due to the fact that they are "favorite children"—one of the administration and the other of Congress.

There is much talk among learned New Deal quarters about the "inflationary gap" between national income and the supply of goods (see accompanying chart). Ways and means to absorb the gap, by "forced savings," voluntary purchase of war bonds, lower-bracket income taxes, a general sales tax, etc., are being debated. The most direct and logical attack—a sales tax—is unpopular because it might "hit" the laboring class. For much the same reason, extension of the income tax to the lower brackets is also opposed. The tendency seems to be to put the heaviest burden on the middle or white collar class—since the wealthy have already been squeezed about as much as economically profitable from a tax standpoint.

Whether the fear of inflation will eventually overcome New Deal scruples against penalizing the newly prosperous laboring class and the farmers is an interesting speculation in political psychology. Perhaps whoever is most vocal will win, in which case Mr. Henderson may prove the winner—after the fall elections are safely over.

In a recent study of inflationary effects of government debt financing ("Everybody's Billions," *The Bankers Magazine* for April, 1942; see page 574, PUBLIC UTILITIES FORTNIGHTLY, April 23, 1942), Oscar Lasdon concludes that, since interest payments on public debts (including state and local) now total only about 2 per cent of the national income, Federal debt is still far from any dangerous level. He mentions Professor Studenski's estimate of 15 per cent as a maximum ratio. (After the Napoleonic wars and World War I, the British ratio reached 8 or 10 per cent of national income—due in part, of course, to high interest rates.) However, Mr. Lasdon thinks that post-war psychology—grumbling against high taxes — will have much to do with the trend of inflation. During the war the government can make necessary readjustments, if it has the courage to do so, by relying on patriotic motives. After the war this can't be done so easily. If the tendency after the war is to push the government debt still higher with huge public works expenditures, foreign subsidies, etc., and the public is unwilling to pay the cost in taxes—then the real trouble may begin, particularly if the Treasury's grip over the banking machinery and its control over interest rates should falter.

With a mounting government debt the post-war initiative of private industry will tend to decline because of the pressure against corporation profits. Unless the government changes its philosophy, debt and taxation may be used as post-war instruments of social "reform," redistribution of wealth and income, and governmental control over the economic machinery. Then will come the real test as to whether the American capital-

istic system can survive in a modified form, or whether government will become increasingly dominant in the economic field. Uncontrolled inflation in stock prices and the resulting debacle damaged the morale of the capitalistic system, and swung the balance of power from New York to Washington, during the 30's.

Possibly during the 40's (after the war) debt inflation and price inflation, with an eventual breakdown in government credit, might swing the pendulum the other way again. However, such conjecture serves little practical purpose now—winning the war is the paramount issue.

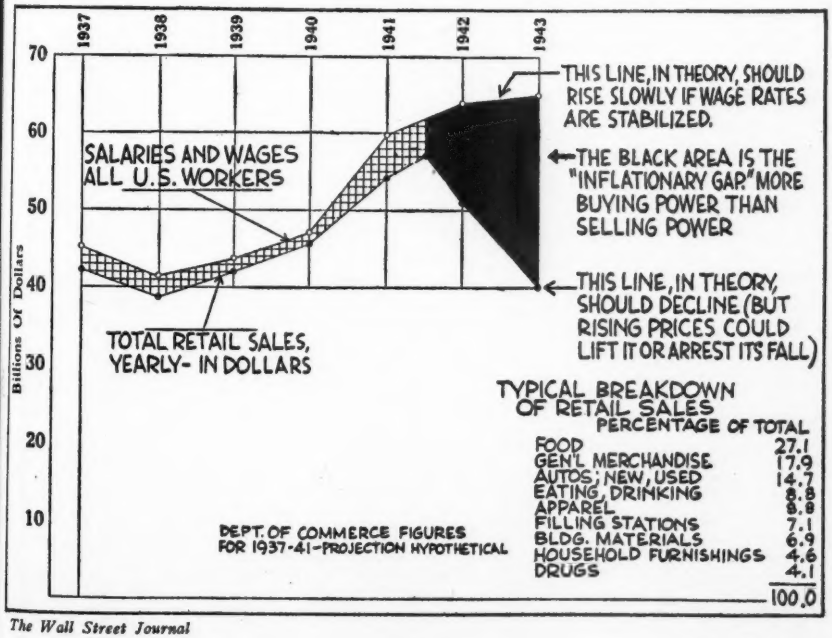
Later we must use our best energies to set up a balance of function and power between the political and economic systems, instead of permitting one or the other to dominate and dictate as we have done thus far. To accomplish this by orderly and reasoned political moves would be much safer and saner than to continue by "dead reckoning" and economic trial and error.

El Paso Natural Gas Company

(Seventh article in a series of brief descriptions of natural gas companies.)

EL Paso Natural Gas, with about $30,000,000 assets, is one of the smaller companies engaged in the wholesale distribution of natural gas. The company (incorporated in 1928) owns and operates a pipe line supplying the city of El Paso and adjacent territory with natural gas from the Lea county (New Mexico) field. Subsidiaries also distribute gas at wholesale to a number of communities in Arizona and New Mexico, and one in Mexico. In all, about 1,520 miles of pipe line are owned and operated, including branch lines.

WIDER "INFLATIONARY GAP" THREATENS



The Wall Street Journal

Gas reserves in the Lea field, where the company buys its requirements, are estimated to have a life of about forty years. Some of the system's larger contracts, with the approximate number of years for which they are good, are as follows:

Texas Cities Gas Co.	20 years
Central Arizona Light & Power	20 years
Tucson Gas, Elec. L. & P.	20 years
El Paso Electric Co.	6 years
Phelps Dodge Corp.	15 years
Cananea Consolidated Copper	8 years
Magma Copper	7 years
Nevada Consolidated Copper	14 years
Phelps Dodge Refining Corp.	13 years

The company's earnings record since organization is shown below (adjusting for the 3-for-1 split-up in 1936).

In the month of March about 41 cents was earned, compared with 37 cents last year, gross being 17 per cent higher.

The company in the past has been affiliated with the banking house of White, Weld & Co., which for some years had one or two representatives on the board. At present, however, the officers and all but two of the directors are Texas men, the exceptions being Howard Bayne and R. W. Carle of New York.

The company has also had some affiliation with Engineers Public Service, which at one time held options on a block of 100,000 shares of common stock and now owns 51,357 (about 8 per cent) of the outstanding amount. El Paso Electric, which buys gas from the company, is controlled by Engineers.

Tax accruals for March were about 30 per cent over last year whereas the current House committee program would seem to indicate a gain of nearly twice that percentage. However, if the "pick-up" in net before taxes for March could be maintained throughout the year 1942, increased taxes (as estimated under the House program) would be fully offset with perhaps a few pennies to spare.

The company increased its dividend rate from 50 cents to 60 cents in the second quarter last year, and the new rate is being maintained through at least the first half of 1942, a June 30th dividend having recently been declared.

Capitalization consists of $11,175,000 funded debt (two issues of first mortgage bonds and two series of notes, all privately held), 14,797 shares of 7 per cent preferred, and 600,342 shares of common stock ($3 par).

As of December 31, 1941, the company's current position was somewhat unsatisfactory. Current liabilities of $2,427,052 (including $800,000 bank loan) were nearly double the $1,293,097 current assets, which included only $98,918 cash. However, maturing bank loans should present no problem. Capital ratios are about 49 per cent funded debt, 10 per cent preferred stock, and 44 per cent common stock.

The common stock is currently selling on the New York Stock Exchange around 20, the range this year being

Year	*Earned per Share*	*Dividends*	*Price Range High*	*Low*
1941	$3.39	$2.30	33	21¾
1940	3.76	2.00	41⅞	26
1939	3.75	2.00	42¾	28
1938	3.10	2.00	29⅞	17
1937	3.04	2.00	29	14¼
1936	1.75	.40	29¼	22¾
1935	1.23	Nil	..	..
1934	.75	Nil	..	..
1933	D .01	Nil	..	..
1932	1.52	Nil	..	..
1931	2.40	Nil	..	..
1930	.83	Nil	..	..
1929 (6 mos.)	.30	Nil	..	..

D—Deficit.

about 26-19. The current yield is now about 12 per cent, and the price earnings ratio is under 6.

Construction Budget for 1942

THE Federal Power Commission estimates that the electric utility industry will spend about $1,069,000,000 for construction in 1942, an increase of 23 per cent over last year. The increase in kilowatt capacity would be 3,735,000 compared with 3,352,000 last year. The detailed budget is as follows:

	1942 Budget	*1941 Actual*
Generating facilities		
Hydro	$266	$154
Steam	264	219
Internal combustion	6	8
Total	$536	$381
Transmission	212	124
Distribution	286	318
General	35	46
Total	$1,069	$869

Actual construction last year exceeded the budgeted amount by about $1,378,000. The small difference—about one-fifth of one per cent—was largely a coincidence rather than a tribute to careful planning, since some areas greatly exceeded their original quota and others fell behind. The budget by areas is as follows:

	1942 Budget	*1941 Actual*
New England	$ 56	$ 50
Middle Atlantic	162	138
East North Central	200	192
West North Central	61	55
South Atlantic	145	140
East South Central	180	108
West South Central	67	46
Mountain	29	24
Pacific	169	116
United States	$1,069	$869

The above figures included both public and private expenditures. Private companies are expected to expend about $622,000,000 this year, an increase of 5 per cent, while public agencies plan to expend about $447,000,000, a gain of some 62 per cent.

The budget figures are virtually the same as those already released by the Edison Electric Institute (see FORTNIGHTLY, May 7th, page 633) but are reported in greater detail.

Dividends to Fit Market Prices

LAST year Public Service Company of Indiana, in its merger and recapitalization, was permitted by the SEC to set up its new common stock at a stated value of $25 per share in the balance sheet, and $25 per share was paid in cash last September for 80,000 shares of the new stock by the estate of Midland United Corporation.

Regarding the $25 value, the commission made the following statement: (page 18 of its decision):

> These figures indicate that there is a reasonable prospect that earnings of the new corporation will be sufficient to give the new common stock a market value substantially equal to its stated value within a few years (assuming continuance of market conditions similar to those prevailing in the recent past), but that neither the earnings prospects nor, especially, the dividend prospects for the immediate future will permit such market value immediately.

Regarding dividend policies, the commission also stated (page 11):

> If it can be assumed that the average annual earnings on the common stock over the ensuing years will be approximately $2,500,000, the dividend restriction of $500,000 a year referred to above would still leave $2,000,000 available for distribution, or about $1.80 per share. This would be equal to 7.2 per cent on the stated value of the common stock. As pointed out above, it is not unlikely that conservative management might require a dividend policy involving retention of a somewhat larger proportion of earnings than is required by the above dividend restriction.

While Public Service's earnings for 1941 were $2.18, exceeding previous estimates, the dividend rate has been limited to $1. The stock, still somewhat unseasoned in its overcounter market, is selling currently around $9 or $10 a share. Counsel for the SEC in a recent hearing asked what objection there would be to restricting the dividend to what would be a fair rate of return on

present market price—say 50 cents a share. Unfortunately market prices are one field of utility finance over which the SEC can exercise no effective control.

Silver Bus Bars

THERE have been recent reports that due to the shortage of copper, and the abundance of silver in government vaults, the government might "release" 40,000 tons of silver for the construction of bus bars. Possibly public power development would be favored over private utilities in this respect.

It is difficult to figure just how much silver is worth to the government. At the average price paid by the Treasury for all mined silver in 1941, it presumably cost about $7.75 per pound, although the legal selling price would be around $1.29 an ounce or $18.83 a pound. A bus bar of silver would thus cost (at least so far as the government is concerned) some 65 to 157 times as much as one made of copper.

The administration seems committed to an arbitrary ceiling of 11.88¢ per pound for copper though this price was "fixed" about a year and a half ago and costs have advanced substantially since that time. Because of this rise in costs only that ore is mined which is considered "rich enough" to cover costs and yield a little profit. The less valuable ore is passed by, and production is thereby handicapped.

While it is true that a bonus is now allowed, this is on such a restricted and complicated basis that it would apply to very little copper, and hence is apparently of little practical value as a production incentive.

Doubtless the utilities should be thankful that the price of copper has been held down by the government, although with a large proportion of net earnings absorbed by taxes the saving in material costs is not of much aid to stockholders, and the shortage of copper may do them more harm than a moderately higher price.

It is thought in the industry that a slight rise in copper prices would permit use of lower-grade ore and thus stimulate production. It seems rather fantastic, therefore, to substitute silver for copper at a tremendous differential in cost. Even if the silver is considered as a "loan," to be given back after the war, the procedure seems unnecessary and inefficient.

There are of course some *industrial* uses to which silver is better adapted than any other metal. For such uses imported silver is theoretically available at the ceiling price around 35 cents—but there is a *shortage* of such foreign-produced silver in the open market because of the low price, lack of shipping facilities, war demands, etc. Seemingly the huge government supply might well be "loaned" for such industrial uses, where silver is really needed, than for bus bars or other utility purposes where copper is about as efficient.

We now have about ten years' world production of silver tied up under all sorts of legislation and rules. This might be an opportunity to clear the slate, relieve silver of its outmoded monetary functions, and release our stocks where they are really needed for important industrial uses.

It is also rumored that, to remedy the deficiency in copper, the government plans to "buy in" excess stocks of the metal which have been fabricated into wire, etc., and convert them into copper available for general use. According to an opinion in the industry, such copper would cost between 20 and 25 cents. Instead of paying this high premium, the government might more profitably announce that the ceiling price for copper —set up long before most other ceilings —should be revised upward moderately to conform to present conditions.

INTERIM EARNINGS PER SHARE

Electric and Gas Companies	*End of Periods*	*12-month Period Last*	*Prev.*	*Incr.*	*3-month Period Last*	*Prev.*	*Incr.*
American Gas & Elec. *Consol.*	Mar.	$2.64	$2.96	D11	$ .75	$ .84	D11
Amer. Power & Lt. (pfd.) *Consol.*	Feb.	4.97	6.50	D24	..	..	..
American Water Works *Consol.*	Mar.	.89	1.11	D20	.06	.28	D79
Parent Co.	Mar.	.42	.32	31	D.05	Nil	..
Boston Edison	Mar.	3.79(a)	2.93(a)	29	1.39(a)	1.27(a)	9
Cities Service P. & L. (pfd.) *Consol.*	Mar.(b)	4.40	5.76	D24	..	..	..
Parent Co.	Dec.	16.56	27.70	D40	..	..	..
Commonwealth Edison *Consol.*	Mar.	1.78	2.31	D23	.41	.56	D27
Com. & Southern (pfd.) *Consol.*	Mar.	7.97	8.02	D1	2.11	2.23	D6
Consolidated Edison, N. Y. *Consol.*	Mar.	1.90	2.11	D10	.89	.99	D10
Parent Co.	Mar.	1.84	2.06	D11	.61	.75	D19
Cons. Gas of Baltimore *Consol.*	Mar.	4.64	4.25	9	1.24	1.25	D1
Detroit Edison *Consol.*	Mar.	1.83	1.74	5	..	..	..
Elec. Bond and Share (pfd.) *Parent Co.*	Dec.	6.92	6.86	1	1.46	2.26	D35
Elec. Power & Lt. (1st pfd.) *Consol.*	Nov.	9.41	8.42	12	2.09	.84	150
Parent Co.	Sept.	1.94	1.77	10	.51	.41	24
Engineers Public Service *Consol.*	Mar.	1.21	1.45	D17	..	..	..
Parent Co.	Mar.	.49	.56	D13	..	..	..
Federal Light & Traction *Consol.*	Mar.	1.55	1.70	D9	.48	.51	D6
Indianapolis P. & L. *Consol.*	Mar.	2.08	3.22	D35	.38	.77	D51
Long Island Lighting (pfd.) *Consol.*	Mar.	5.21	5.86	D11	1.49	1.65	D10
Parent Co.	Mar.	5.98	6.79	D12	1.67	1.87	D11
Middle West Corp. *Consol.*	Dec.	1.13	1.20	D6	..	..	..
Parent Co.	Dec.	.48	.53	D9	..	..	..
National Power & Light *Consol.*	Dec.	1.03	1.32	D22	..	..	..
Parent Co.	Dec.	.39	.66	D41	..	..	..
Nor. States Pwr. (Del.) *Consol.* (Cl. A)	Jan.	2.81	2.69	4	..	..	..
Ogden Corp.	Dec.	.08	.10	D20	..	..	..
Pacific Gas & Electric *Consol.*	Mar.	2.13	2.54	D16	..	..	..
Public Service of Ind.	Mar.	2.02	1.89	7	.50	(c)	..
Public Serv. Corp. of N. J. *Consol.*	Mar.	1.64	2.47	D34	.43	.83	D48
Southern California Edison	Mar.	2.19	2.27	D4	.32	.48	D34
Stand. Gas & Elec. (pr.pfd.) *Consol.*	Dec.	6.22	8.76	D29	..	..	..
Parent Co.	Dec.	2.29	2.02	14	..	..	..
United Gas Improvement *Consol.*	Mar.	.69	1.00	D31	.16	.24	D33
Parent Co.	Mar.	.63	.96	D34	.13	.23	D43
United Lt. & Power (pfd.) *Consol.*	Dec.	6.89	8.78	D21	..	..	..
Parent Co.	Dec.	1.55	3.94	D61	..	..	..
Gas Companies							
American Lt. & Traction *Consol.*	Mar.	1.94	1.79	8	..	..	..
Brooklyn Union Gas	Mar.	2.05	2.44	D16	.83	.86	D3
Columbia Gas & Electric *Consol.*	Mar.	.09	.35	D74	.08	.31	D74
El Paso Natural Gas *Consol.*	Mar.	3.57	3.70	D3	..	..	..
Lone Star Gas *Consol.*	Mar.	1.11	1.14	D3	.85	.80	6
Northern Natural Gas *Consol.*	Dec.	3.30	3.65	D10	..	..	..
Oklahoma Natural Gas	Mar.	3.94	3.37	17	..	..	..
Pacific Lighting *Consol.*	Mar.	3.30	3.32	D1	..	..	..
Peoples Gas Light & Coke *Consol.*	Mar.	6.84	4.65	48	2.43	2.12	15
Southern Natural Gas *Consol.*	Mar.	2.01	1.77	14	..	..	..
United Gas Corp. (1st pfd.) *Consol.*	Dec.	14.34	12.27	16	4.50	2.55	76
Parent Co.	Dec.	11.17	9.17	22	..	..	..
Telephone and Telegraph Companies							
American Tel. & Tel. *Consol.*	Feb.	10.36	11.32	D8	2.66	2.74	D3
Parent Co.	Mar.	9.98	10.18	D4	2.52	2.54	D1
General Telephone *Consol.*	Mar.	2.51	2.93	D14	.48	.83	D42
Western Union Tel.	Mar.(b)	7.07	4.49	28	1.25	1.23	2
Systems outside United States							
Amer. & For. Pwr. (1st pfd.) *Consol.*	Dec.	6.76	6.16	10	..	..	..
Parent Co.	Dec.	3.89	3.13	24	..	..	..

D—Deficit or decrease.
(a) Before Federal taxes, "no reasonable estimate" of which can be made.
(b) Three months. (c) Not reported.

What Others Think

President Approves WPB Control of War Power Supply

ANNOUNCEMENT was made on April 29th of approval by the President of a joint agreement between the War Production Board and the Federal Power Commission which unites the efforts of the two agencies in meeting and handling war-time power problems. The agreement, which was signed by Chairman Donald M. Nelson for the War Production Board and Chairman Leland Olds for the Federal Power Commission, clearly defined the respective responsibilities of the two agencies for the purpose of securing maximum efficiency and the avoidance of duplication in the administration of the war-time power program.

The text of the agreement recited the following reasons for the new agreement:

> For the purpose of securing maximum efficiency in the promotion of war activities related to the production and utilization of power, it is recognized that the primary directing responsibility for problems of war power supply, both in respect to planning and administration, rests in the War Production Board. It is also recognized that the Federal Power Commission under its various statutory authorities has numerous permanent responsibilities and functions relating to the operation of electric utilities during both peace and war and that, at the direction of the President, it has, since 1938, been engaged in planning for a supply of power adequate to meet the demands of war, a function now vested in the War Production Board. In carrying out these permanent and emergency functions the commission has assembled an experienced staff and has collected considerable information and data which can be of substantial value to the War Production Board in connection with the dispatch of its responsibilities.

DEFINING the responsibilities of the War Production Board the statement of the agreement outlined the following problems arising out of war power supply as being the exclusive responsibilities of the WPB:

1. Development and administration of programs to assure that the equipment and materials which can be made available for power supply purposes, pursuant to the board's production programs, are allocated to those areas where and at those times when the need is most urgent from the standpoint of the military and war production program, keeping in mind the minimum dislocation of civilian supply. This includes, of course, planning for and administration of priority control and allocations of materials and equipment for all power systems, both public and private, and for industries operating or installing generating facilities.

2. Determination of power supply and demand in relation to the war production program and essential civilian activities. This includes the programming of power supply requirements for the various War Production Board branches, the armed services, the Maritime Commission, and the other agencies engaged in the military effort or in war production.

3. The planning, development, and administration of power supply allocation programs for those regions where the available supply proves insufficient to meet all requirements.

4. The mobilization of power to meet specific war production requirements including the working out of arrangements for power supply to specific military establishments and war industries and the development and administration of programs for coördination of transmission lines and power plants to assure an adequate supply for such establishments and industries, including the expansion of power capacity where needed to meet such requirements.

It is recognized that, while the War Production Board has exclusive authority and responsibility with respect to the matters above outlined, the Federal Power Commission, as a result of its experience, can contribute materially to the performance of these functions by its advice and counsel. To this end the War Production Board will welcome such suggestions and recommendations as the commission may from time to time desire to submit. Consistent with the purpose of this memorandum and to avoid duplication, the commission will not

undertake any investigations with relation to the above-outlined matters for which the War Production Board is responsible, except after clearance with the board, unless such investigation may be necessary in order to carry out the responsibilities of the commission as outlined below.

DEFINING the responsibilities of the Federal Power Commission, the agreement restated the gist of the statutory powers of the FPC as set forth in the Federal Power Act as amended. The text of this restatement was as follows:

1. The licensing of privately constructed hydroelectric projects and the regulation of such projects in accordance with the provisions of the act.

2. The fixing of rates for the transmission and sale of electric energy in interstate commerce; control of the importation and exportation of electric energy; and the disposition and acquisition and merger of public utility properties.

3. The supervision of accounts and rates of depreciation of public utilities subject to the commission's jurisdiction.

4. The collection, compilation, and tabulation of information regarding the generation, transmission, distribution, and sale of electric energy by public and private agencies throughout the United States; and regarding the ownership, financing, operation, management, control, service, and contracts of such public and private agencies, as specifically set forth in § 311 of the Federal Power Act.

5. Surveys and explorations of river basin developments and studies of power installations in connection with flood-control programs.

6. Protection of the power supply against hostile acts in coöperation with the utilities and other government agencies, in conformity with the President's directive of June 14, 1940.

With respect to the commission's authority to require the interconnection of electric facilities under § 202 of the Federal Power Act, it is understood that during the continuation of the war, action will be taken and orders will be issued by the commission with reference to such interconnections only after prior clearance with the War Production Board as to the nature of such action and the form and substance of such orders, to make certain that any interconnection to be planned for or ordered is essential in the war effort and to assure that materials can be made available for carrying out such interconnection.

In order to obtain maximum effectiveness and avoid duplication of effort, the WPB and the FPC agreed on the following arrangement with respect to procedure and use of staff:

1. All such studies and compilations as the commission may make in carrying out its functions as outlined above will be made available to the War Production Board, such as

(a) Monthly reports on power system capacities and loads by power supply areas; (b) periodic reports describing power plants, transmission facilities, and interconnections; (c) periodic reports on industrial power plants, capacities, and loads; (d) investigations of rates in connection with power interchange matters.

2. The commission will make such specific additional studies as the War Production Board may request which can be carried out with available personnel and without interfering with the essential statutory functions of the commission.

3. At the request of the War Production Board, the commission will make available for employment in the activities involving the War Production Board's responsibilities outlined above such members of its staff as are not required by the commission in the performance of its duties and responsibilities as above outlined, with the understanding that such staff members will be available for the duration of the war and that, in the execution of such responsibilities, such staff members shall be subject to the supervision of the War Production Board.

4. The Power Branch will submit its basic M, L, and P priority orders to the commission for consideration and recommendation in accordance with the procedure governing the relation of the Power Branch and the other branches and divisions of the War Production Board in such matters.

5. In times of emergency the commission will, if requested by the War Production Board, make available temporarily such additional members of its staff as can be spared from other work to assist the staff of the War Production Board in carrying out programs essential to assuring an adequate power supply for military needs, war production, and essential civilian requirements.

6. In order to secure maximum efficiency and economy and evidence coöperation before the industry and the public, the Power Branch of the War Production Board and the Division of Finance and Statistics of the Federal Power Commission, with the approval of the Division of Statistical Standards, Bureau of the Budget, will work out procedures in the collection and compilation of statistical and other information, having a general or national coverage, which

will avoid duplication and impose upon industry the least burden compatible with securing sound and satisfactory results.

WITH the President's blessing thus placed on WPB as boss of war power supply, the National Power Policy Committee, Secretary of Interior Ickes and his numerous power plans would appear to be eclipsed from the standpoint of future policy making. The Bonneville Power Administration and Bureau of Reclamation (both under Secretary Ickes) will be utility operators like the TVA, subject to WPB orders on the same basis as private utilities. In fact, Bonneville has already indicated that it will coöperate with WPB with respect to a request for interconnections between Bonneville and Washington Water Power Company and Pacific Power & Light.

More Light Where It Is Needed

ON April 2, 1942, by its Limitation Order L-78, the War Production Board directed an immediate end to fluorescent lighting fixtures. Two exceptions were made: (1) for essential uses, meaning installations bearing a priority rating of A-2 or better; (2) installations under contracts accepted prior to April 2nd on which work had begun.

On April 24th this order was amended so as to ease the restrictions on production and sale of small fixtures and to set a definite closing date on the manufacture of other types. Specifically, the amendments allow manufacture without restriction of fixtures having a lamp capacity of 30 watts or less, if materials were ordered before April 2nd and were actually on hand by April 20th.

This curtailment of the production of fluorescent lighting fixtures has left in its wake several puzzling problems. First of all, the conversion of a number of industrial plants to war work will require a rearrangement of lighting facilities. Modern scientific lighting is admirably suited to such purposes. Unfortunately, the installation must be more or less engineered to the job to get satisfactory results. Fluorescent lighting is perhaps less elastic in this respect than conventional incandescent bulb lighting. Very limited use can be made of abandoned nonessential equipment such as beer signs or other display lighting now being taken out of service as the result of electric power conservation and air-raid protection.

There is also the fact that use of fluorescent lighting ties in with the need for electric power conservation in "tight" areas by producing more effective illumination in proportion to power consumed. Hence, notwithstanding the tendency to reduce nonessential outdoor lighting to save power and coöperate with antiair-raid measures, there is an actual need for expanding and improving interior lighting in hundreds of plants all over the country which are being built or converted for essential production.

The British found out early in the war that it was a bad mistake to cut down on interior lighting, however great the need for a strict blackout on exterior lighting. Brilliantly lighted factories on the inside helped British morale and pepped up production. (See page 768.)

Doubtless a number of these industrial plants, which are now being built or converted to essential production, will be able to get the necessary A-2 rating for any modern lighting installation needed. But there are other plants which may not be able to make out a clear-cut case for an A-2 rating but which still require the best and most scientific form of lighting they can get: central telephone exchanges; shipping docks and terminals of all kinds; warehouses and storage facilities of all kinds.

Charles A. Stone, editor of *New England Electrical News,* in a recent issue of that publication, strongly urged the operating utilities to take the leadership in making the facts and opportunities about fluorescent lighting and other improved

The (Baltimore) *Sun*

PRESIDENTIAL PROPHECY COME TRUE

lighting known to the entire industrial community. Mr. Stone stated:

The war is demanding better lighting as an integral tool for greater production. And it is up to the central power stations to lead the way. There are hundreds, perhaps thousands, of industrial plants in New England, big and small, whose output could be increased substantially through better illumination, and whose priorities would permit modern installations. There isn't a manufacturer anywhere who wouldn't gladly consider better illumination if it would result in increasing production, say, upwards to 15 per cent, as there is abundant proof that, in many cases, it could. But unless the utilities take the initiative, many of these essential lighting improvements will never materialize. And the loss will not only be the electrical industry's, but the nation's.

The task of selling and educating industry to better lighting as a war necessity is much too large for contractors to handle individually. It is a promotional effort of the greatest magnitude. Central stations, with their competent engineering and research departments, are admirably fitted to assume the leadership so vital at this time. In fact, with their retail sales departments virtually marking time, and with many utilities either abandoning or drastically curtailing appliance activities, there is little choice for the central stations but to turn to the only natural outlet for their product—better lighting. They will not only be performing a real war-time service, but charting the post-war course as well.

The job is clearly defined. There is not a contractor in any community in New England who couldn't list a dozen prospects for better lighting—plants which would jump at the opportunity of increasing production if the story of better lighting were presented to them forcefully and unvarnished, backed up by recognized engineering authority. There is no more acceptable an authority than the utility company in any community. It is not a question of convincing individual plant owners; the contractors can do that. It is the more gigantic problem of driving home the need of better lighting to all industry. Only through active, qualified leadership, such as that of the central station, can that be accomplished.

A. R. SHELDON, writing in the March issue of the same publication,

pointed out that there is an opportunity in this promotional work for a number of utility sales organizations which are otherwise having their functions curtailed because of shortages and restrictions being placed on utility appliances generally. Mr. Sheldon states:

> There is no one who doubts that the utilities through their merchandising departments were largely responsible for the wide and rapid acceptance of electrical appliances that raised the living standard of this country to heights unapproachable by the rest of the world, and which took drudgery out of the home and gave women freedom beyond the fondest dreams of suffrage leaders.
>
> The utilities helped accomplish this emancipation of the home through what is perhaps the finest example of merchandising and promotion this nation ever witnessed. The same type of leadership is now imperative to liberate industrial plants from the drag of unscientific and improper lighting and to stimulate greater production and efficiency through "better lighting."
>
> There are hundreds, perhaps thousands, of otherwise modern plants in New England, big and small, which are still attempting to meet ever-increasing war demands with lights so poor that man hours are wasted at an appalling rate. These manufacturers have rushed to install the latest equipment, they are busy with schemes to train additional workers and to keep those at work functioning at top speed, but nobody, apparently, has attempted to demonstrate to them that, in comparison to their requirements, they are working by candlelight.
>
> With some utilities virtually stepping out of the appliance field for the duration, and with all of them curtailing such activities, the resources of the central stations can be turned to no more important function than to the promotion of lighting, which, after all, is their primary obligation.
>
> Not only would they be performing an heroic and patriotic duty, but they would also be preparing the way for a better America after the war clouds have passed.

Some utilities, Mr. Sheldon states, have developed lighting engineering departments which are the last word in efficiency. But they are timid about pressing too strongly in the lighting field for fear of getting ahead of the contracting fraternity. So they have limited themselves, more or less, to answering specific questions instead of going into the field and selling better light where it is so badly needed and where the need is not clearly recognized.

INDEED, this selling job may require more than selling the customer. It might well require selling the idea to the defense authorities in Washington—the idea that better lighting means more production. If the WPB authorities were completely sold on this idea they might even be constrained to make further adjustments in Limitation Order L-78, so as to clear the track for improvement in interior industrial lighting in all cases except those which are clearly nonessential and dispensable.

The relatively small amount of critical materials that would be needed when offset against salvage and reclaiming of materials in displaced installations might be well worth the price in terms of more effective war effort.

British Blackouts and the Utilities

W. J. JONES, director of the lighting service bureau of The Electric Lamp Manufacturers' Association of Great Britain, recently wrote a most interesting news letter to Davis M. DeBard, vice president of Stone & Webster Service Corporation, on the subject of war-time lighting in Great Britain. This letter described residential, commercial, factory, and street lighting methods of handling blackouts which, since the beginning of the war, have been an every night practice in Britain proper. Taking up first the subject of residential blackouts, Mr. Jones stated:

> This is most usually done by opaque (not necessarily black) curtains additional to the normal decorative ones; the average British curtain, though thicker than its American counterpart, is not sufficiently dense to prevent the emission of light. Fixed or movable plywood shutters, etcetera, are sometimes used instead. For administrative reasons it

is considered necessary to prevent *any* light being emitted from houses, although any light accidentally emitted is not necessarily visible from the air. Beyond the cutting out of decorative lighting effects there is little change from peace-time domestic lighting practice, invariably carried out by gas-filled tungsten lamps.

Torches (flash lights) for outside use must be dimmed by one thickness of newspaper or its equivalent, and light must not be emitted from a dimmed area greater than that of a one-inch diameter circle.

As to blackouts on streets and other external areas, Mr. Jones tells us that the English people have coined the word "starlighting," to describe war-time street lighting. That is because the lighting used gives the average illumination of .002-foot candles, roughly equivalent to starlight. It must be kept on during a raid. White light only is used and all fittings must carry official certificate marks. This is the only form of external lighting allowed without special police permission.

For external working areas, such as buildings, illumination levels of .002-, .02-, and .2-foot candles may be permitted, depending on the nature and importance of the work. Automobile headlights are fitted with masks so that each lamp gives not more than 2.5-foot candles on a vertical surface at a range of 10 feet.

As to the effect of the British blackout on commercial lighting, Mr. Jones states:

Shops are not permitted any light in the windows during blackout periods except for a sign of limited size, with a brightness not exceeding 0.02-foot lamberts. (This is about equivalent to good moonlight on a white surface.) Shop windows have of course suffered heavily in some areas, being mostly boarded up with only small glazed apertures. Ingenuity is frequently shown in utilizing the boarded frontage for sales messages and in some cases artists have been employed to paint attractive designs and pictures.

Some people—probably a minority—believe that all window lighting should be banned in order to conserve fuel, but it is doubtful whether the suggestion will be acted upon owing to the probable depressing effect on morale.

Most shops close before blackout time in order to allow the staff time to get home before air raids (if any) begin. Rationing of many articles has in any case cut down spending, and allows the shop's business to be done comfortably between the hours of, say, 9 A. M. and 5 P. M.

Restaurants, cinemas, theaters, hotels, etcetera, which remain open during the blackout, are provided with some form of light-lock at the entrance. This nearly always consists of a darkened passage with one or more corners to prevent the emission of light. Light traps designed on the same principles are fitted over ventilators, etcetera.

Many of the larger and more important British factories, particularly those with roof lights, are equipped with power- or hand-operated steel shutters which can be rapidly closed. These are very valuable where camouflage is necessary, since the paint can be applied to the building as a whole while the shutters are closed, eliminating the need of obscuring the glass itself. A great many older buildings are obscured by blinds or movable shutters to admit at least a portion of the daylight. Some success has been achieved in persuading factory executives that blackout material should be light colored on the inside, as this is beneficial on the score of welfare and economy of electricity.

As to technical advice on lighting, Mr. Jones' letter continues:

The shortage of all engineers concerned with lighting has made it necessary to avoid duplication of effort as far as possible. To this end all sections of the electrical industry concerned, *i.e.*, all associations representing lamp makers, fittings makers, power supply, and the installation trade, have joined in a National Industrial Electric Lighting Service, one of whose aims is to put factory executives in touch with competent lighting advisers and, where possible, to avoid more than one technical lighting specification being prepared for any factory. Some thousands of factories have been relighted since the outbreak of war. This service was formed at government request and works in close collaboration with government departments; uniform interpretation by the electrical trade of government requirements is one of the most valuable results of the formation of such a central advisory organization.

Owing to the shortage of metals, the need for fuel economy and the call up of much of the labor employed in manufacturing fittings, it has become necessary in recent months to postpone lighting improvements in factories or parts of factories where the lighting is already moderate, and to concentrate entirely on backward factories and

on those factories or parts of factories where better lighting is likely to improve conditions to such an extent that production will be materially increased.

The British have apparently concentrated on one type of fluorescent tubular lamp. This is 5 feet long, 1½ inches in diameter, rates at 80 watts. It gives a near daylight color. Almost the entire output of these lamps goes to industrial users. Others find it difficult to obtain the necessary ballasts on account of priority certificates necessary for steel, etcetera.

ANOTHER letter to Mr. DeBard from a British utility man, Ernest E. Sharp of Somerset, England, describes the trend of war-time developments in the commercial operation of utilities — a trend which is becoming somewhat familiar here in America. Mr. Sharp's letter states:

> The trend was (a) closing down of sales efforts and new rental business; (b) slump in output and local dislocation through bombing; (c) pick-up and increase in business due to industrial demands; (d) some reopening of lecture-demonstrations in showrooms to assist domestic consumers in coping with changes in food situation.
>
> Linked up with this question is the fact that if one wants to buy, say, an electric range or water heater, etcetera, there's no chance of delivery unless it is related in some way to war work. Contract number has to be quoted on order and no contract number (government work) means no priority and that means delivery after the war.
>
> Also, following on this question is the impossibility of sending any pictures or stories about bomb damage to power stations. Strictly forbidden. Speaking without direct knowledge my impression is that holdups from this cause haven't been serious and that damages to transmission and distribution have been more in evidence but local and soon overcome. Electric clocks have suffered more from bad timekeeping than actual stoppages.

Mr. Sharp's letter closed with some observation about the widespread use of women in British industry. He says that they do not take to discipline as readily as men but they are cheerfully doing their best. He concludes "there doesn't seem to be any job that the girls can't manage, whether it needs brains or brawn."

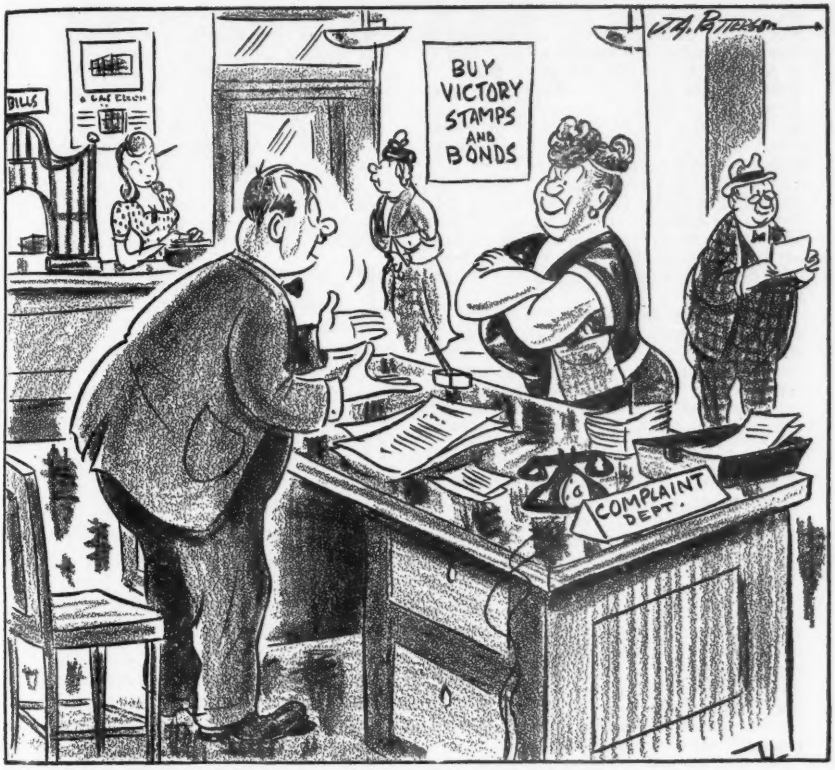
War Effect on Telephone Rates and Service

RATIONING and price fixing, two of the most widely discussed domestic war activities of the day, will have a considerable effect on the rates and service of public utility industries.

Francis X. Welch, associate editor of PUBLIC UTILITIES FORTNIGHTLY and special Washington correspondent for *Telephony,* recently analyzed these and other war-time impacts on the telephone industry in an address before the annual convention of the Pennsylvania Independent Telephone Association, delivered at Wilkes-Barre on May 21st. Referring to gasoline and tire rationing, Mr. Welch predicted a greatly increased traffic load on an existing telephone plant which can no longer be expanded because of WPB priority restrictions.

Mr. Welch said in part:

> You may ask what new load I am talking about. Well, let us take, for example, the recent gasoline rationing imposed in the East, which will soon be extended to the entire country. Already we see small but significant signs of increasing local and long-distance traffic which might be attributable to the gasoline rationing. It is only reasonable to expect that with pleasure driving virtually a thing of the past, and with total automotive traffic reduced approximately 50 per cent, a new load is going to fall on the telephone. It is only reasonable to expect that this trend will become more noticeable in months to come when the shortage of transportation facilities requires ODT to start rationing passenger tickets on trains and busses, just as air traffic is restricted today. When that time comes, the telephone is going to have to take over much of the work that used to be done by the family car and other means of transport. It will be a substitution of communication for transportation.
>
> It stands to reason that if the average American family has to give up its periodical visits to Grandma's house or Cousin Joe's, and if Junior has to give up his automobile date with his best girl, and if the housewife is no longer able to make free use of the family car for a tour of shopping, bridge, and other matronly activities, the



"I'M SORRY, MADAM, BUT WE *CAN'T* PUT VITAMIN B-1 IN YOUR GAS SUPPLY"

telephone is going to have to do a lot of backstopping to keep the lines of family relationship, romance, and sociability intact. There will be long-distance calls to Grandma and Cousin Joe. There will be long and ardent conversations via telephone between Junior and his girl, and Mrs. Housewife is going to shop by phone and visit by phone as much as she can.

This load comes on top of certain changes and dislocations in the American way of life, which have already excited an unprecedented amount of telephone traffic. We cannot take literally millions of men and women out of their home communities and put them into Army and war work in distant cities without developing more of a national appetite for long-distance conversation. Then too, of course, the very tempo of war business activity has required a greater business use of telephone facilities.

These trends are probably well known to telephone men. And doubtless somewhat similar reactions are becoming apparent in the gas and electric fields. It stands to reason that if the American people have to stay at home all day Sunday and during their leisure hours, there is going to be more home use of electricity for illumination and appliances, more home-cooked meals, and so forth. The real puzzle is how to take care of the situation.

Again referring to the particular problem of the telephone industry, Mr. Welch continued:

> The first step in the conservation of telephone facilities is clearly indicated. That step is an appeal for voluntary discipline by the telephone user. I have already observed that thought emerging in some of your in-

stitutional advertising in newspapers and magazines. Success in this respect lies in impressing upon the telephone user that *it is patriotic to use the telephone wisely.* I wish that that slogan, or perhaps some more fortunately or cleverly phrased slogan with the same idea, could be tacked up above every telephone receiving set in the United States in traffic-congested areas. If the public can only be made to think a little more carefully, not only about unnecessary calls but unnecessarily long calls, it would go a long way towards whipping this job of making your present plant carry the staggering load that is in store for you in the months ahead.

I believe that one step alone, if carried out with the greatest effectiveness, would be pretty nearly the answer to your traffic problem. You would not have to go into the complex and difficult problem of actually restricting the nonessential use of the telephone—a task which is so dangerous to your present excellent state of public relations.

After all, the public realizes that the telephone industry is not alone in its problem of trying to do a bigger job than ever with proportionately less working plant. Indeed, we cannot name offhand any major industry which is not pretty much in the same boat. The building trades, food, textiles, and so forth, all have similar problems. And the same coöperative spirit which makes the average American coffee drinker cheerfully and vigorously stir his single spoonful of sugar can be just as easily transformed into widespread coöperative assistance for your operating problem, provided the public is impressed with this thought that *it is patriotic to make wise use of the telephone.*

There are other shortages which are going to make this man-sized telephone job even tougher to perform. Gasoline and tire rationing, for example, and the steady diversion of your trained man power and woman power into the armed forces or active war work are two problems which I think can be whipped by coöperation. Coöperation between telephone companies and perhaps coöperation with your sister public utilities —gas, electric, and waterworks.

Before the tire situation is relieved—and it positively will not be relieved before 1945 —I frankly do not see how it will be possible to avoid some arrangement for pooling tires, repair trucks, and even emergency crews. Obviously, in this talk I cannot spell out the exact verse and chapter, even if I were qualified to say what might be done along these lines from the standpoint of practical operation. But I will say this: To the extent that your telephone companies and other public utilities look ahead and perfect their own plans for whipping these emergency problems, to that extent will you be relieved from the annoyance of governmentally influenced restrictions emanating from Washington — restrictions which may not be as sympathetic, as understandable, or as feasible as the plans you can work out for yourselves, if you have the will to do so.

Furthermore, I see in this situation a golden opportunity for your state associations to reach their peak of service for their membership companies. Associations are natural clearing houses for information and, I believe, could readily function as a starting point for any intraindustrial or any interindustrial pools or other coöperative plans for easing the common burden.

THE speaker went on to say that the recent decision of the WPB to shift the emphasis from defense plant construction and expansion to immediate production would likewise have its effect upon the utility industry. If that policy is followed, it might well mean temporary abandonment of long-range plans, such as the St. Lawrence seaway and power project. It might also result in a stabilizing influence on the planning of the utility industries for the future.

Mr. Welch observed that in the past the American government has had to "raise its sights" at least three times so as to demand more and more industrial expansion and direct war activity. This has naturally placed more and more demand on operating utility companies and their manufacturing correlatives. But now we are on the verge of seeing the limit—the horizon. We at least have an idea of just how much of a job is ahead. This might also limit the amount of war expansion in terms of new utility construction, which would have to be written off after the war is over.

On the important subject of utility price fixing during the emergency, Mr. Welch raised an interesting point. He referred to the idea that telephone and other utility rates should be "frozen" for the duration along with other prices of commodities regardless of the reasonableness of the return. He stated:

> . . . This idea was expressed in the recent act of the Wisconsin commission denying a telephone increase in that state. It was also present in the recent controversy over raising telephone rates in Iowa—an increase which was voluntarily withdrawn by Northwestern Bell at the request of OPA.
>
> There is a color of plausibility about this proposal to "freeze" phone rates along with

food, clothing, etc., which makes it all the more insidious. There is some danger that an accumulation of separate small precedents such as the Wisconsin and Iowa cases might result in foreclosing not only the Bell system but independents and other public utilities as well from rate relief which may be desperately needed before the war is over or after.

I think it is perfectly safe to assume that the telephone industry is not looking for any special favors, and is willing to do its share in sacrificing profits for the war effort. But this freezing argument overlooks the fact that telephone rates and other utility rates have been frozen by a very strict and precise system of regulation for many years—long before price fixing and price freezing for general commodities was even heard of. It also overlooks the fact that by March of this year—the deadline for OPA retail price fixing—the competitive and unregulated commodities such as foodstuffs and clothing had already worked themselves up to a point considerably higher than a year ago, two years ago, or five years ago. What OPA did was simply to check this rise at the March level.

But consider the fact that for the past ten years there has been no substantial increase in telephone rates anywhere in the United States. On the contrary, telephone rates, on the whole, have been on the downward trend during that period. And now that these rates have finally struck economic bottom—now when operating expenses, including labor and taxes, are rising so rapidly that a reversal of that downward trend is clearly in prospect, along comes the proposal to freeze telephone rates arbitrarily at that irreducible minimum, simply because the prices of other commodities have been checked at somewhere near their peak. Such a proposal, if strictly enforced, would not only be unfair but a positive danger to the ability of the industry to carry on its important work at this critical time.

The telephone industry does not want profits-as-usual. But it does want and should have fair examination of the merits of rate increase applications where they are necessary. If after such an examination the regulatory authorities decide that under the prevailing circumstances it should shave the normal rate of return—I am sure the industry would coöperate. But it is an entirely different matter for regulatory authorities, who have kept utility profits at a minimum for many years, to dismiss out of hand any and all rate increase applications simply because they are increases and without a fair verdict upon the merits of the particular case.

THE speaker recalled that World War I history, both at home and abroad, demonstrated that during a period of rising prices utility rates have always lagged behind unregulated commodity prices. He observed that in France this resulted in a partial collapse of the essential transportation and communications industries.

He warned that the same thing could happen here if utilities are placed in an inflexible strait-jacket with respect to their rates. The job of the utilities is too important to be jeopardized in any such fashion. Mr. Welch closed with the suggestion that "a more fortunate test case can be developed which will ventilate the problem fairly and completely, instead of allowing the issue to go by default."

A CORRECTION

IN reporting (FORTNIGHTLY, May 7th, page 648) the action of the circuit court of appeals in upholding a ruling of the Securities and Exchange Commission that Pacific Gas and Electric Company is subject to the Holding Company Act, it was erroneously stated that the SEC had refused to authorize the sale of certain securities. Information from the SEC is to the effect that no application or declaration covering the sale of these securities was ever presented to the commission, and the SEC, therefore, had no occasion to consider the matter.

Furthermore, the bulk of the securities in question was distributed while there was pending before the SEC the company's application for an order declaring it not to be a subsidiary of the North American Company. The pendency of this application, under the provision of § 2(a)(8) of the act, exempted the company from the provisions and requirements of the act until the commission acted upon the application. Hence, the company was under no requirement to seek SEC approval of the issuance and sale of the securities.

The March of Events

Senate Confirms Nomination

THE Senate confirmed on May 12th, without objection, the nomination of James P. Pope, former Democratic Senator from Idaho, for a new 9-year term as a member of the Tennessee Valley Authority board of directors.

Pope's previous term expired May 18th. He was appointed to succeed former TVA Chairman Arthur E. Morgan, who was removed by President Roosevelt as the outgrowth of differences within the directorate.

Agree on War Output

TRANSPORTATION Director Joseph B. Eastman announced recently that railroad labor and management had agreed to use all available railroad shop facilities in production of war materials with labor working a 48-hour week at basic railroad shop pay.

Eastman said the agreement was reached unanimously at a conference between railroad management and railroad shop crafts and officials of the War Production Board, the Labor Department, and the Office of Defense Transportation.

The rail shops may be asked to produce items used in military and naval equipment, in marine transportation, and in manufacture of munitions and other war materials, Eastman said.

At the request of the War and Navy departments, the Labor Department has agreed to exempt the railroad industry from the prevailing wage provisions of the Walsh-Healey Act and the rail shop crafts "have expressed themselves as in full accord with this exemption," Eastman declared, adding that the crafts "are to be commended for this highly coöperative and unselfish spirit in our war effort."

New Street Lights Halted

THE War Production Board last month requested electric utility systems to discontinue for the duration of the war all new installation of street lighting except that essential for public safety.

The WPB Power Branch said also that agreements between utilities and local government units providing for street and highway lighting extensions should be suspended. The branch informed utilities that they should not apply for priority assistance to obtain material for such extensions.

The prohibitions do not apply "where traffic conditions are enormously aggravated by war industries, camps, airports, etc.," the branch said, nor do they apply to necessary traffic control signals essential to public safety.

Copper Waste Probe

A HOUSE military subcommittee on May 10th announced it would resume its investigation of copper wastage with a hearing on charges that 4,000,000 pounds of the metal were allocated to construction of an unnecessary rural electrification line from Oklahoma to Arkansas.

Without disclosing the source of the charges, the committee in a statement said they included the allegation that the War Production Board had approved use of copper in the construction of an REA line from Grand River dam in Oklahoma to a defense aluminum plant at Lake Catherine, Arkansas.

Declaring the power would be transmitted from a "shortage area to a surplus area," the statement added "the power to be delivered by REA to the Arkansas aluminum plant is no longer required" because revision of plans require only 70,000 kilowatts instead of the 100,000 originally estimated.

The committee, headed by Representative Charles I. Faddis, Democrat of Pennsylvania, said WPB officials would be given an opportunity to "clarify their actions"—after the charges had been "explored."

SEC Protects Wholesalers

IN an effort to aid war work, the Securities and Exchange Commission last month announced adoption of an amendment permitting industrial manufacturing companies to wholesale surplus electric and gas energy in connection with war emergency activities without being subject to the Public Utility Holding Company Act.

The general effect of the rule, the SEC said, "is to prevent companies which would not otherwise be subject to the act as subsidiaries of registered holding companies or as public utility companies from losing that status as a result of war-time interchange of power."

The amendment was to Rule U-7, which

provides that companies primarily engaged in other businesses shall not be deemed electric or gas utility companies if their gross sales of electric and gas energies did not exceed $100,000 for the previous calendar year.

The amendment adopts new classes of sales, which may be excluded from the gross sales. These new classes are:

Sales to tenants or employees of the operating company for their own use and not for resale.

Sales of gas to industrial consumers or in enclosed portable containers.

Sales of surplus electric energy at wholesale during the existence of the national emergency, and for one year thereafter, by any such company which is not a subsidiary or a registered holding company and which was not an electric utility company as of January 1, 1941.

Norris to Run Again?

SENATOR George W. Norris, Nebraska Independent, charged on May 11th that the "power trust" is taking advantage of the war situation to launch a campaign to curb public power projects. The undercover campaign, he asserted, is being carried on with assistance of both Federal and state officials in key positions who are friendly to the power interests of the country.

Besieged by friends with requests that he become a candidate for reëlection as Senator despite the fact that he is approaching his eighty-first birthday, Norris hinted that he may again seek office to aid in combating what he terms a general fight against public power development.

"There is no doubt but that the 'power trust' is actively taking advantage of the war situation to block all public power developments possible and to curtail all activities that they can," said Norris.

The fight against public power has been centered particularly on the Tennessee Valley Authority, he said, but it has extended to many other projects and proposed developments, both on the East and West coasts. "They have men in key positions in Federal and state governments, particularly in state governments out West, and they are using priorities and other means to stop developments."

SEC Move Disclaimed

THE Securities and Exchange Commission, still settling down after being moved to Philadelphia from Washington, last month denied "categorically" that it would be moved again.

In an office memorandum, Chairman Ganson Purcell said the commission "obtained the authority of the office of the director of the budget to state categorically that there is no truth whatsoever in this report."

The "disquieting" rumors had the commission being transferred to cities ranging from Chicago to Seattle to make room for other government agencies.

Arkansas

Company Gets Extended Time

THE state utilities commission last month granted an additional year for construction of the Arkansas Power & Light Company's proposed 30,000-kilowatt steam-generating plant in south Arkansas, delayed by war conditions. The AP&L is unable to obtain equipment, the commission said, in an order issued on May 5th. When the commission granted permission to build the plant, May 15, 1941, it set May 15, 1942, as the deadline.

Commissioners A. B. Hill and J. W. Kimzey signed the order, first released since Chairman Ben E. Carter resigned to campaign for a supreme court judgeship.

California

Railway Strike Averted

SWIFT action by the San Francisco city government, working against a double deadline, on May 12th assured a dollar-a-day raise to car men of the municipal street railway system and eliminated the last danger of a threatened strike transportation crisis.

In quick order the San Francisco board of supervisors on May 11th rushed through an ordinance pending since 1930 to standardize the salary scales of all city employees and then followed up with an amendment to the new ordinance providing an increase in the car men's wages from $6 to $7 a day.

Although it would not receive final approval for ten days, the amendment passed on first reading, 9 to 2, and that was all the assurance needed to satisfy 900 motormen, conductors, and bus drivers that their requested pay boosts would be forthcoming with the start of the new fiscal year, July 1st.

The strike had been scheduled for midnight May 11th.

Power Output Hooked Up

OPERATION of all southern California electric utilities will be coördinated for the purpose of assuring adequate power for war production, it was announced recently by J. A. Krug, chief of the power branch of the War Production Board. His announcement followed the conclusion of a series of conferences with representatives of all public and private utilities in the area at which the program was formulated.

"Complete integration of all power facilities in southern California, including all necessary interconnections, can be accomplished under the authority and with the assistance of the War Production Board," he explained in commenting on the program.

"In this manner it should be possible to maintain essential electric service without imposing further burdens on critical war materials at this time. It would be highly desirable to install additional generating capacity in this area. We all recognize that if we do not bring in more capacity we are taking a risk that may impair the kind of electrical service we have all grown accustomed to in recent years.

"But we feel these risks are necessary in order to conserve critical materials and equipment so necessary to the armed services. Turbines and generators that we would like to locate in this area are even more necessary for warships and the merchant marine.

"The program that has been worked out through the splendid coöperation of the Los Angeles Bureau of Power and Light and other southern California power systems should enable us to get by for the present without interference with war production or essential civilian uses."

Ban on Women Conductors Lifted

WOMEN'S place is everywhere but in the police and fire departments. The San Francisco Civil Service Commission last month not only reversed itself and opened the way for employment of women as conductors on the municipal railway's street cars, but declared a broad policy of permitting employment of women in other capacities. The commission said:

"In taking this action, the commission realizes that a new reservoir must be opened from which to recruit personnel for many lines of municipal service and that all departments must eventually be adjusted to the use of women in positions for which men have been used heretofore and for which men are not now available."

In the future, the commission will admit women to all examinations "which, in the judgment of the commission, can be filled satisfactorily by women."

The commission ordered a special examination for women for street car conductors to be held in June. The age limit is twenty-one to forty-five years.

Natural Gas Study Proposed

MAJOR L. A. McQuown, natural gas control section of the U. S. Army Ordnance Department, Pittsburgh district, has proposed to study California natural gas supply and demand in relation to war conditions. The San Francisco ordnance district suggested that Major McQuown meet with representatives of utilities and the California Railroad Commission to discuss supply, demand, and regulation and give data relative to the state situation, according to Colonel K. B. Harmon, deputy district chief of the San Francisco district.

The Ordnance Department follows the practice of delegating certain functions to districts. Natural gas control studies are centered in the Pittsburgh district.

Forms State Traffic Committee

GOVERNOR Olson recently called upon chiefs of the motor vehicle department, agricultural department, state railroad commission, the attorney general's office, and the education department to function as a committee on the state's crucial war transportation problem.

James M. Carter, director of the motor vehicle department, was named chairman with the railroad commission remaining in charge of mass transportation to war plants by common carriers.

Richard Sachse, railroad commissioner, said a major portion of a statewide plan for mass transportation to war plants has been completed by the commission. It will require expenditure of $12,000,000, he said. The state will look to the Federal government for aid.

Trolley Line Sale Talks Opened

FIRST move toward consolidation of San Francisco's two big transportation systems was made on May 14th as Mayor Rossi opened negotiations for the city's acquisition of the Market Street Railway.

Preliminary discussions took place at the city hall between Mayor Rossi, City Attorney O'Toole, Manager of Utilities Cahill, Harry B. Lake of Ladenburg, Thallman & Co., New York, representing the railway's bondholders; Samuel Kahn, president of the company; and Cyril Appel, head of the railway's legal department.

The mayor subsequently indicated that the transaction would be arranged speedily and satisfactorily. Mayor Rossi said they did not talk about the price of the railway's properties on May 14th.

Lake had previously stated the company would ask $9,500,000 for the system, while the mayor had said the city would be unable to pay more than $7,000,000.

Colorado

FPC Denies Rehearing

THE end of the Denver gas rate case as far as proceedings before the Federal Power Commission are concerned was written on May 14th when the commission denied the applications of the defendant companies for a rehearing and paved the way for a court review of its decision of two months ago in which it ordered rate reductions estimated at 33⅓ per cent or more.

Word of the commission's action was received in telegrams from Washington, D. C., which were received by City Attorney Malcolm Lindsey and attorneys for the companies —the Colorado Interstate Gas Company, the Canadian River Gas Company, and the Colorado-Wyoming Gas Company.

The companies had asked the commission to reopen the entire gas rate case, alleging, among other reasons, that the commission's rate reduction order was based on conditions and income which prevailed in 1939, before the coming of war changed the aspect of the gas business.

A petition for a stay of the FPC's rate reduction order in its application to the Colorado-Wyoming Gas Company was filed in the tenth United States Circuit Court of Appeals late May 14th.

The Colorado Interstate Gas Company and the Canadian River Gas Company had filed similar petitions several weeks ago. All three companies had been ordered to put rate reductions into effect in June.

The petitions for stays were designed to give the companies opportunity to file petitions before the circuit court for a review of the commission's order.

The Colorado-Wyoming Company operates a pipe line from Littleton to Cheyenne, Wyoming, where it serves 17,000 consumers. The FPC ordered a reduction in rates amounting to at least $119,000 a year.

Governor Declares Conference Failure

GOVERNOR Ralph L. Carr, on his return to Denver last month, expressed "intense disappointment" over the interstate trade barrier conference held by the Department of Commerce in Washington recently and declared the governors were not offered a single "intelligent suggestion."

"I will say on behalf of the states that every expression I heard while in the nation's capital was the desire to coöperate in every way possible," he declared.

The governor said the assembled delegates, representing every state in the union, heard Paul V. McNutt, director of social security; Frances Perkins, Secretary of Labor; Jesse Jones, Secretary of Commerce; Claude Wickard, Secretary of Agriculture; and Joseph B. Eastman, director of transportation, but most of their dealings were with undersecretaries and clerks, who did not know what they wanted.

"You can't expect any results from this meeting," the governor said.

"I fear the same agencies which have been issuing orders from time to time without full knowledge and without sympathy for the rights of the people of the states are going to ignore those rights and privileges and issue further orders to make advances not required nor justified in conduct of the war. For the most part we were told only wonderful generalities.

"Not a one of the governors could understand what was being asked of them because the government representatives did not know themselves.

"Someone says trade barriers between states restrict commerce and the war effort. They haven't yet defined trade barriers and no one has analyzed the situation sufficiently in Washington to offer intelligent suggestions."

Connecticut

PUC Named to Regulate Travel

GOVERNOR Hurley last month designated the state public utilities commission "as the War Transportation Regulating Agency of the State of Connecticut," so that the vital work of overseeing and coördinating the state's transit facilities may be handled "with the necessary freedom of action not provided for under the regulatory statutes."

In accordance with this emergency designation, R. C. Schneider, secretary of the commission, recently issued the following statement of policy concerning coördination of all available facilities to insure transportation of the state's war workers to and from their jobs:

"The established motor transportation companies, each with definite routes and territories assigned to them, that is, carriers rendering passenger transportation service before December 7, 1941, will have the first right to render, either directly or through joint operating agreements, or as otherwise approved by the commission, war transportation service, provided they are ready and willing and able to give the required service."

However, the commission realizing that regular transportation companies in Connecticut

do not have adequate facilities and equipment for providing the increased service brought about by curtailment of private car travel, through Mr. Schneider presented a 14-point program governing the "conditions under which special bus service permission will be granted to private corporations or individuals during the present emergency."

Georgia

FPC Hearing Set

THE Federal Power Commission last month said a hearing on the Georgia Power Company's declaration of intention to complete construction of the 50,000-kilowatt hydroelectric project on the Oconee river near Milledgeville, would be held at Washington on June 1st.

Work on the project began in 1930 but was brought to a halt in the spring of 1931 after expenditure of approximately $3,000,000, power company officials said. They estimated it would require a year and a half to complete.

Illinois

Gas Users Get Refund

REFUNDS which may total $6,000,000 will be made to a million gas users in the Chicago area as a result of a recent decision by the United States Supreme Court ordering reductions in rates charged by the Natural Gas Pipeline Company of America.

This was disclosed at a hearing before the United States Circuit Court of Appeals on May 6th by attorneys for three utility companies which will participate in refunds from the pipe-line system. The three are the Peoples Gas Light & Coke Company, Public Service Company of Northern Illinois, and Western United Gas & Electric Company.

Kenneth F. Burgess, attorney for Peoples Gas, told the court that the gas company would make no claim to the refund it receives, but intends to pass the money on to its 800,000 customers in the form of rebates.

Burgess explained, however, that although the reduction in pipe-line rates, which is retroactive to September 1, 1940, amounts to nearly $6,000,000, a claim to some of this money may be made by the Federal government for income and excess profits taxes.

If taxes are paid as a result of the payments from the pipe-line system, the rebates to the consumers should be reduced by the amount of the taxes, Burgess contended. Harry J. Dunbaugh, attorney for the Public Service and Western United companies, which have 200,000 gas customers, said he subscribed to Burgess' statement.

Albert E. Hallett, assistant state attorney general, argued that the $6,000,000 should all be passed on to the gas customers. He declared the Federal government apparently would have no tax claims against the three utilities, inasmuch as the utilities would receive no net benefits as a result of the refunds.

Indiana

Commission Order Dissolved

A RIFT between the state public service commission and the Indianapolis Power & Light Company was ended last month. The commission recently had cited the utility to appear May 20th to show cause why it had not filed a statement of the original cost of its properties, as requested five years ago. The commission on March 19, 1937, had asked that the statement be filed within two years. The company replied to the latest order by filing its cost statement early the week of May 11th.

The commission's attention fell on the company's failure to file the statement in a current proceeding in which the company sought authority to issue $2,000,000 in first mortgage bonds. The purpose was to reimburse its treasury for improvements. When the commission inquired into the company's evaluation to learn whether it was high enough to stand any more indebtedness, it found the cost statement had not been filed.

The commission then withheld action on the bond request because the cost computation had not been made. In an order on May 15th it granted the bond request, asserting it found, on comparison and check-up of the cost statement, that the utility had not passed its debt limit.

At the same time it dissolved its show cause order against the company, ending both proceedings. The bonds will be bought by the John Hancock Mutual Life Insurance Co.

Company Gets Temporary Order

GRANTED a temporary restraining order on May 9th in Boone Circuit Court preventing the city of Lebanon from taking possession of the local electric distribution system, the Public Service Company of Indiana asked for an injunction to block the city's condemnation proceedings on the grounds that a switch to municipal ownership now would endanger the city's defense contracts.

The utility's complaint, on which the temporary order was granted, averred that the condemnation procedure against its electric property in Lebanon would cost the city far more than city officials in 1937 told the voters it would cost, and contended that the voters should have a chance "to vote now in the light of known facts."

The filing of this complaint followed closely an attempt by the city to take over the electric utility distribution property on May 9th.

Boundary Appeal Denied

THE controversy of Perry and Decatur townships over their boundary line was settled recently as a result of the state supreme court's denial of a petition for transfer of the case from the appellate court.

The appellate court decided the case in favor of Perry township in February and counsel for Decatur township attempted to transfer the case to the supreme court. The dispute involved an Indianapolis Power & Light Company plant assessed at nearly $6,000,000.

John George, trustee of Perry township, said the effect of the decision would be to reduce the Perry township tax rate about one-third. The dispute was whether the valuable utility property should be on the assessment roll of Perry or Decatur township.

Iowa

Transportation Drive Mapped

THE Iowa defense transportation campaign will be developed in three main phases, Karl Fischer, state coördinator of defense transportation, said recently. Most important phase, Fischer said, would be promotion of the "swap ride" program by which groups of workers club together so that one man drives his car one week with several fellow workers as passengers and then becomes a passenger himself in the other workers' cars until his turn to drive comes up again.

Another phase of the campaign will center around the staggering of hours in factories, schools, stores, and business houses.

Third phase of the campaign will deal with elimination of all unnecessary passenger car driving, Fischer said.

Coördinator Fischer said, "Iowans, like all others the nation over, have got to realize the rubber they now have on their cars simply has to last them throughout the war. There isn't going to be any more for general civilian use. If we don't start conserving that rubber, the nation's public transportation system will become so clogged later on that our war production effort will be seriously curtailed."

Kentucky

Vote to Issue Bonds

FIVE southwest Kentucky cities seeking TVA power systems on May 6th were a step nearer municipal ownership of electric distribution properties.

The Bowling Green common council on May 5th gave final reading to an ordinance providing for a $790,000 bond issue to finance the municipal purchase of Kentucky-Tennessee Light & Power Company's distribution properties in that city.

The 27-page ordinance, prepared by Louisville investment firm representatives and approved by TVA officials, guarantees an interest rate on the 20-year issue not exceeding 3.09 per cent and the bonds are to be subject to call in less than twenty years if funds for retirement become available.

Investment firm men said similar ordinances had been passed by city government bodies at Hopkinsville, Russellville, Murray, and Mayfield, the other municipalities in the group seeking to purchase Kentucky-Tennessee distribution facilities in the respective cities.

Final contracts were signed at Bowling Green on May 13th to open the way for distribution of TVA electric power to the five municipalities. The contracts were signed by the mayors and city clerks of Bowling Green, Russellville, Hopkinsville, Murray, and Mayfield and by TVA officials and representatives of the Associated Gas & Electric system, New York, with which the Kentucky-Tennessee Light & Power Company is affiliated.

Transfer of Facilities Approved

ELECTRIC consumers now served by the Kentucky-Tennessee Light & Power Company in eight midstate counties will save from $15,000 to $16,000 a year in rate reductions

when Kentucky Utilities Company takes the property in a trade, it was testified last month before the state public service commission by R. M. Watt, president of KU.

The commission immediately approved the trade by which Kentucky-Tennessee will receive $175,870 in cash and Kentucky Utilities systems now serving Franklin, Auburn, and Woodburn in exchange for Kentucky-Tennessee systems now serving Beattyville, Bloomfield, Irvine, Ravenna, New Haven, Taylorsville, and Lebanon Junction.

Kentucky Utilities intends to apply its own rate schedules in the territory to be acquired, Watt said. All K-T schedules now higher than KU rates will be lowered, while a few K-T rates lower than prevailing KU schedules will be frozen at their present levels.

Fights REA "Intrusion"

THE city of Olive Hill on May 12th contested the right of the Rural Electrification Administration to extend service to suburban areas and annex customers now served by rural extensions of a municipally owned electric system.

The question developed before the state public service commission on application of the Mason-Fleming REA to build 8.2 miles near the city limits of Olive Hill, for service to forty-three consumers served by the city and for thirty more families now without electric service.

The commission adjourned the hearing to an undetermined date to allow both sides to file further pleadings.

Asks More Time in Deal

AN extension of the period during which the city of Paducah and the Kentucky Utilities Company might determine a price for the company's local properties was requested by the board of commissioners on May 12th.

The time for negotiations ended on May 13th under an agreement between the city and the company. Without an extension, both the city and company are required to fix the price under terms of the franchise sold by the city to the company in 1940.

The board adopted a resolution authorizing Mayor Pierce Lackey to enter into an agreement with R. M. Watt, president of the utility company, extending the time for negotiations. If Watt does not agree to the extension, the city and the company have thirty days in which to name appraisers.

Louisiana

Acts to Further Gas Probe

THE New Orleans commission council took action at its regular meeting on May 5th to further the city's investigation of rates charged in the city for natural gas. Members of the council adopted a resolution by Utilities Commissioner Fred A. Earhart authorizing the city attorney to ask the Federal Power Commission that it extend a current investigation to include rates charged for natural gas at the city gate of New Orleans.

The resolution also authorized the city attorney, "if the facts justify," to seek from the Federal Power Commission a "fair, reasonable, and just rate" in the price which United Gas Pipe Line Company charges New Orleans Public Service Inc. for natural gas at the city gate.

It was set forth in the resolution that the FPC, at the request of the Louisiana Public Service Commission, is now investigating rates charged in other municipalities of the state by United Gas and by the Interstate Natural Gas Company, Inc., but that New Orleans was not included in the Federal Power Commission's study.

The price paid United Gas by Public Service has a direct relation to charges made to consumers, the resolution stated, adding that "the commission council believes it to be to the best interests of consumers to intervene to the end of having the investigation extended to New Orleans."

Michigan

Adopt Pontiac Plan

DRASTIC changes in the life habits of several million residents of Michigan were forecast in Lansing recently as state officials and the heads of 36 cities prepared to inaugurate the war transportation conservation plan on a wide scale.

First essayed experimentally in Pontiac, the scheme for staggering the hours of factory shifts, schools, and business places early won national recognition and resulted in the governors of the several states being urged by Joseph B. Eastman, director of the Office of Defense Transportation, to adopt it.

It was in response to Eastman's request that Governor Van Wagoner called a meeting of state and municipal officials at Michigan State College on May 11th. Complete coöperation was promised.

Missouri

Gets Power Control

THE Union Electric Company of Missouri, one of the country's largest operating utilities, completed arrangements last month for the outright purchase of all physical properties of the Laclede Power & Light Company for $8,600,000. The deal will bring about complete integration of electric facilities in the St. Louis area under single ownership.

Consummation of the deal marked the end of negotiations which had extended over more than a year. The sale was part of a reorganization plan for the Laclede system filed with the Securities and Exchange Commission and the Missouri Public Service Commission in September, 1941. In the original negotiations for the sale of Laclede Power to Union Electric, the sale price was pegged at approximately $13,000,000.

The Union Electric Company is the largest subsidiary in the North American Company system, while Laclede Power & Light and its affiliate, the Laclede Gas Company, are operating subsidiaries of the Ogden Corporation, successor corporation in reorganization to the defunct Utilities Power & Light Corporation.

The Laclede Power & Light Company has been operating for some time without any substantial stand-by capacity, and because of priority restrictions and other limitations, according to its officials, it was believed that it would be difficult to obtain the necessary new equipment to keep abreast of war production.

Union Electric handles most of the electric business in St. Louis, serving more than 350,000 customers, and has an installed generating capacity in excess of 700,000 kilowatts. Formed in 1926, Laclede Power & Light has an installed capacity of 68,500 kilowatts and approximately 41,000 customers.

State Attorney General Roy McKittrick on May 15th said he was watching the proposed absorption of Laclede Power & Light Company by Union Electric, with a view of opposing the move if it appeared that the rates now paid by Laclede customers would be increased to the level of Union Electric rates.

Nebraska

Electric Property Purchases

NEBRASKA City municipal officials last month said they had entered into an agreement with the First Trust Company, Lincoln, and the Wachobbender Corporation, Omaha, to negotiate with the Consumers Public Power District for purchase by the city of electric properties of the former Central Power Company.

The agreement provides that should the proposition secured for the city by the two bond houses be satisfactory, the firms will handle the financing at a rate of interest not to exceed 3¼ per cent.

When and if an agreement is reached as to the purchase price, a special election will be held to give the voters of Nebraska City opportunity to voice their sentiments. The bond houses would be paid 2 per cent of the purchase price as their commission.

Court Hears Power Deal Argument

ARGUMENT was heard by the state supreme court last month on the motion of the Consumers Public Power District to dismiss the action in *quo warranto* brought by Attorney General Johnson questioning the validity of its purchase of the common stock of the Western Public Service Company which gave it possession of its properties. The cities of Sidney, Bridgeport, Scottsbluff, and Chadron have intervened on the side of the state.

The attorney general said the district has no authority in law to purchase common stock; that the Murphy amendment to the law under which the district operates prohibited the purchase of properties where the revenues of irrigators were added to by purchases of power from a government-owned power project.

New Jersey

Transit Changes Barred

THE state public utilities commission virtually froze public transportation in New Jersey on May 14th, announcing that no applications for extensions or modifications of existing routes would be approved unless they were necessary to serve war industries or military installations under present emergency conditions.

The move, the commission explained, was designed to conserve rubber, gasoline, and other vital transportation materials, and is in line with regulations recently promulgated by

the Federal Office of Defense Transportation. The commission also disclosed it was considering steps to eliminate duplicate service by competitive carriers.

New York

Governor Vetoes Bills

GOVERNOR Lehman on May 10th, at the request of the state public service commission, and also of Mayor LaGuardia, vetoed the Ehrlich bill, which would have fixed 5 cents as the maximum fare for the transportation of school children within a single city, or, in New York city, within a single borough.

A memorandum from the commission stated that maximum rate statutes had always been ruled out by the courts, and that the proper rate-making body was the public service commission. It added that the bill was aimed at the International Railway Company of Buffalo. The grounds for Mayor LaGuardia's opposition were not disclosed.

The governor also has vetoed as unnecessary the Buckley bill prohibiting ownership of stock in radio stations or chains by aliens. He said that the Federal Communications Act already covered the field.

Dimouts Cut Light Bill

NEW York city will save $200,000 a year because of dimouts required by the Army, Patrick Quilty, commissioner of water supply, gas, and electricity, said recently. A 20-minute blackout for all five boroughs will save the city $300 on street, fire-alarm-box, and one-way arrow lights.

Thirty thousand lamps are involved in the dimout ordered by the Army to prevent city glare that has silhouetted ships fifteen miles out at sea. Some lamps were being replaced by bulbs using less current, some were being shielded, and others were being painted in sections of Brooklyn facing the water and in Coney island, the Rockaways, and Staten island.

During trial blackouts demand for electric current in the affected sections has dropped 50 per cent, in line with the experience of other cities, according to the Consolidated Edison Company.

Fare Ruling Stands

STATE Supreme Court Justice Samuel H. Hofstadter last month denied an application by the New York Central, Long Island, and Staten Island Rapid Transit railroad companies for a reconsideration of his ruling of last March permanently restraining the railroads from applying to one-way intracity fares the 10 per cent increase granted early this year by the Interstate Commerce Commission for interstate fares.

The state supreme court permitted the railroads to add certain documents to the record of the case, but denied their plea to reconsider on the basis of these documents.

In his original ruling, Justice Hofstadter provided that the railroads might apply to the ICC for a clarification of its intentions with regard to intrastate rates in connection with the increase, but the ICC declined to make any clarification. Justice Hofstadter said the only conclusion from this was that the ICC "did not wish in any way to interfere with or affect the decree of this court."

Oklahoma

To Sell Power to GRDA

OKLAHOMA'S tangled power situation became more confusing last month as the Grand River Dam Authority prepared to buy power from two private utility companies in the state. It was learned that the GRDA, the Oklahoma Gas & Electric Company, and the Public Service Company were working on a plan of coöperation for the war effort.

The two private utilities on May 7th signed a contract with the Federal Works Administration, operating Grand River dam, to furnish electric energy to the dam during off-peak hours of customer consumption.

The major share of the benefits to be derived from the joint contract will be gained by the authority in that all of its capacity, without any reserve on its part, will be made available for war industries while the utility companies will supply the needed reserve, George A. Davis, president of Oklahoma Gas & Electric, said.

Under the contract the utility companies will supply the dam authority's entire commitments for electric power between the hours of 9 P. M. and 8 A. M., permitting the GRDA to shut down its own turbines and the dam to accumulate water so the plant can run during the next day.

Davis said the electric companies agreed to sell current to the authority at 3 mills per kilowatt hour during the off-peak hours and will pay the authority 5 mills for any current they might get from it during any on-peak hours.

Pennsylvania

Chartered Bus Service Ended

THE state public utility commission, conserving transportation facilities for the war effort, on May 16th banned chartered bus service.

The order provides that all bus equipment not operated in regularly scheduled service be used only for transportation of defense workers or similar necessary uses, such as transportation of Army draftees, participants in athletic activities at military posts, school children, school employees, and underprivileged children.

The order was the second issued by the commission that week aimed at conservation of rubber, gasoline, and bus equipment. In the first, the commission refused an Altoona street railway company permission to abandon service and substitute a bus line.

Rhode Island

Appropriations Approved

GOVERNOR J. Howard McGrath last month signed the annual appropriations bill amounting to $17,764,237, a measure which played a prominent part in the political trading during the last moments of the state general assembly, which convened this year.

The act contained $25,000 to be spent by the select senate committee investigating telephone rates and a similar amount for the so-called Curvin committee of the house, which has conducted public hearings on wire tapping and other subjects.

South Carolina

Utility Deal Halted

THE South Carolina Supreme Court on May 12th prohibited the South Carolina Public Service Authority from buying the properties of the South Carolina Electric & Gas Company and Lexington Water Power Company, estimated at $40,000,000.

The authority, state-created supervising agency of the $57,000,000 Santee-Cooper hydroelectric and navigation project in lower South Carolina, had planned to buy the properties to expand its facilities into central South Carolina.

Mayor F. B. Creech of Sumter initiated the successful move to block the purchase.

Tennessee

Gets Pipe-line Certificate

THE Kentucky-Tennessee Natural Gas Corporation of Louisville, Kentucky, was issued a certificate of permission on May 12th to construct a 62-mile pipe line for natural gas to Knoxville, Alcoa, and Kingsport.

Originating in the Knox county, Kentucky, gas fields, the line would supply approximately 8,000,000 cubic feet of gas daily.

The granting of the certificate to the Kentucky firm, however, would not affect the conditional permit already granted the Tennessee Gas & Transmission Company for serving most of the cities in middle and east Tennessee, Utilities Commissioner Leon Jourolmon said.

"This simply gives the Kentucky company the same chance that Tennessee Gas has had to present its applications for pipe lines (now under priorities restrictions) to the Federal Power Commission and the War Production Board," the state commissioner declared.

TVA Requests Cities to Produce Power

IN a move to conserve power and water reserves in the Tennessee valley, the TVA last month asked several municipal power plants to resume operations. TVA officials said at Chattanooga on May 14th that "probably half a dozen" municipal plants had been requested to resume operations as a conservation measure designed to delay "drawing water out of reservoirs."

These power-generating plants, the officials added, would continue operation "throughout this summer and every summer as long as the war lasts," to conserve TVA-generated electricity. At Nashville Mayor Thomas Cummings said the city coal-operated power plant would start operation immediately.

Texas

Gas Rate Cut Ordered

ENDING ten years of controversy, the Federal Power Commission last month ordered the Lone Star Gas Company, Dallas, to reduce its natural gas city gate rate from 40 to 30 cents a thousand cubic feet, which will result in an annual savings of more than $2,000,000 to domestic and commercial customers in 280 Texas and Oklahoma communities.

Chief beneficiaries of the order, entered after the company agreed to accept findings of the regulatory body, would be greater Dallas, with an estimated annual savings of $686,000; Forth Worth, $315,000; Paris and Waco, Texas, $102,000; and numerous other Texas communities, $895,000; Durant, Frederick, and other Oklahoma cities, $73,000.

The Texas Railroad Commission, the Oklahoma Corporation Commission, and Dallas public utilities supervisor approved the order.

The order, effective May 15th, obligated the Lone Star Company to make the 10-cent reduction effective to all domestic and commercial consumers in 280 communities served by it and various affiliates, including Dallas Gas Company, Community Natural Gas Company, and Texas Cities Gas Company.

The commission allowed the Lone Star Company a return of 6½ per cent, or $2,455,000, on a rate base of $37,774,000.

Although the order was the culmination of proceedings instituted by the commission only last July, upon petition of Dallas, the commission said it ended ten years of effort to obtain a reduction.

Vermont

FPC Issues License

THE Bellows Falls Hydro-Electric Corporation has been issued a major license covering its existing project on the Connecticut river at Bellows Falls, Vermont, the Federal Power Commission has announced.

The license, according to the FPC order, is for a period terminating June 30, 1970, and specifies a return of 6 per cent a year on the net investment after the first twenty years of operation. The project has been in operation since March, 1928. The order further specified that annual charges beginning January 1, 1942, are to be based on a capacity charge of 1 cent per horsepower on the authorized capacity (57,571 horsepower), plus 2½ cents for each 1,000 kilowatt hours of gross energy generated.

Washington

Power Sale Contract Signed

A CONTRACT for the sale of power by the Puget Sound Power & Light Company to Whatcom County Public District No. 1 was signed last month, according to officials of the company.

The agreement provided that the district would buy its power from the company if and when it takes over the company's properties, consisting of power transmission facilities, under a jury verdict of August 7, 1940. The contract would expire December 31, 1945.

Condemnation Price Set

THE Federal District Court in Tacoma, Washington, has established a condemnation price of $7,600,000 for properties of the Puget Sound Power & Light Company in Thurston, Lewis, and Cowlitz counties in the state of Washington, it was disclosed recently.

This figure was said to represent an increase of $2,600,000 over the counties' condemnation claims, and a reduction of $2,900,000 from the company's claims.

The three counties are at the southern limits of the Puget Sound system. Puget Sound is a subsidiary of the Engineers Public Service Company.

Taxi Rates Cut for Service Men

AN offer of the Seattle taxicab industry to give special low rates to men in the armed forces to take them to posts of duty was accepted recently by the city council license committee. The council regulates fares charged by the taxicab companies.

E. B. Fish, in behalf of the industry, suggested that fares for service men be reduced from $1.80 to $1.25 between the central business district and Sand Point Naval Air Station. The $1.25 rate also would apply to Fort Lawton and Boeing plants and field, while 75 cents would be charged between the central business district and Pier 41.

Moreover, free cab service was offered by the city's 250 cabs to men called in an emergency to their posts. This included Red Cross workers as well.

The council committee recommended that an ordinance be drawn effecting the lower rates.

The Latest Utility Rulings

Court Reverses SEC Ruling on Securities Acquired by Officers

UPSETTING a ruling by the Securities and Exchange Commission on the fiduciary relationship of corporate officers and directors, the United States Court of Appeals for the District of Columbia has reversed an order in the Federal Water & Gas Corporation Case (41 PUR(NS) 321, 361) and remanded the matter to the commission.

The commission, in approving a merger plan, had imposed a condition that new common stock should not be issued in exchange for preferred stock purchased in the 3-year period 1937-1940 by any officer or director. Shares so purchased were to be surrendered upon payment of cost and 4 per cent interest. The condition had been imposed because of the commission's view that officers and directors occupied, during the pendency of proceedings, a fiduciary relation to the corporation and to its shareholders. The purchase of stock, even though made honestly and after full disclosure and at a fair price at public sale, was termed detrimental to the public interest.

Tracing the development of this situation, the court noted that when a reorganization plan was first proposed objections had been raised to the retention of voting power by Class B common stock.

Substantially all of this belonged to Utility Operators Company, which in turn was controlled by officers and directors of Federal. The officers and employees of Federal realized that if the commission persisted in these objections they would find themselves without either a stake or influence in the companies they had helped create and by which they were employed. Therefore, they made these purchases of preferred stock in the open market.

The validity of the commission's order imposing the condition was examined in the light of statutes, regulations, and rules of law or equity which might proscribe such transactions of officers. Under the laws of Delaware the purchase of stock in a corporation by a director is legal. The weight of authority, said the court, is that a director is not a trustee as the term "trustee" is ordinarily used. At most, the relationship is a circumstance which may enter into the question of actionable fraud or deceit.

No prohibition against such dealings was found in the Holding Company Act. Section 17 of the act requires officers and directors of registered holding companies to report purchases and sales. This, said the court, was obviously for purposes of publicity. To prevent the unfair use of "inside information" by the management, Congress further enacted that any profit derived from any purchase and sale or sale and purchase within any holding period of less than six months should inure to the corporation. The court continued:

> Clearly, the enactment of § 17 was intended to restrict a recognized existing right and place a definite and certain limitation on its exercise. But subject to its provisions, officers and directors of a corporation are permitted to deal in its securities. Of this, and of the exercise of the right, day after day, without question, there can be no manner of doubt. And this is just a recognition by Congress of the rule that, while officers and directors are trustees for stockholders as a body with respect to the business and property of the corporation and in the management of its affairs, they are not trustees —in the sense we are concerned with here —to the individual stockholder, since they have no control over his shares.

The commission, said the court, was adventuring with uncertain steps into a new field in which there was neither guide nor compass in the act or in any administrative practice. This was said to be an expansion of power not conforming to the Senate committee's admonition, in reporting the Securities and Exchange Act, that the commission's authority must be administered within the well-defined limits of the act.

The court concluded that to hold with the commission would require it to say that a transaction which the general law recognizes as lawful, and to which Congress has attached conditions, is detrimental to the public welfare, notwithstanding no breach of the conditions is shown.

Until Congress acts to change the standard it has expressly set up in the act, action by the commission to expand or enlarge its terms and to make such expansion or enlargement apply to transactions three years old is, in the opinion of the court, retrospective legislation. *Chenery Corp. et al. v. Securities and Exchange Commission.*

Higher Costs Require Increase in Gas Rates

THE Massachusetts Department of Public Utilities authorized an increase in gas rates to meet the higher costs, holding that such increase was not unreasonable or improper in view of existing abnormal conditions entirely beyond the control of the management. The department believed it would be unwise and inexpedient to refuse the company this relief.

As to objections to the form of increase, it was said:

> The principal objection raised at the hearing to the proposed new rates was to the increase from 75 cents to $1 for the first three hundred cubic feet per month. It was contended by the petitioners that the above increase in the first step is "unjust and unreasonable discrimination against the poorer class of customers."
>
> The department does not agree with this contention since experience has proved to its satisfaction that small users, ordinarily termed "convenience customers," are not necessarily the "poorer class of customers" [Re Boston Consol. Gas Co. (Mass 1939) 30 PUR(NS) 260]. This is borne out by a recent survey made by the company in which it appears that a very low percentage of the small users of gas could be classed as people of limited means.

Department of Public Utilities v. Fall River Gas Works Co. (DPU 6718, 6719).

War Emergency Freezes Rates Of Telephone Company

SO far as possible present rates should be stabilized for the duration of the war, according to the Wisconsin commission. So long as there is a ceiling on prices of other human necessities, says the commission, rates for utility services, if within the range of reasonableness, should be "frozen" and should not be regulated upon precisely the same considerations as prevail in normal times.

This view was expressed in a decision wherein an application of the Wisconsin Telephone Company to increase its revenues in the Madison area was denied. The company's application included a proposal to enlarge the base rate area of the exchange and a proposal to substitute measured for certain unlimited service. It had designed its rate schedule to cover such service. It was estimated that the proposals, if carried out, would increase the cost of service to subscribers in the Madison exchange $290,000 annually.

An important factor considered by the commission was the inability of the company to obtain material for equipment changes which would be necessary to enable the company to give measured service. Rates for measured service were said to be interrelated with rates for unlimited service, and if for any reason there should be no measured service, the rates as proposed for both unlimited and measured service could not be approved.

The commission recognized that there may be instances where some increases are necessary in order to insure the financial ability of the utility to continue in the rendition of service, but, it was said, rates should not be increased solely because the management may consider that its return is less than it is entitled to ask in normal times. *Re Wisconsin Telephone Co. (2-U-1811).*

The commission also dismissed petitions by patrons requesting in effect that the areas or subdivisions in which they resided be included within the so-called base rate area of the Madison exchange so as to make the base rates of that exchange applicable to the service. The commission held that in view of its action in disapproving the application for higher rates and to revise the Madison base rate area, it would be unfair and improper to require the enlargement of the Madison exchange base rate area. *Jacobs et al. v. Wisconsin Telephone Co. (2-U-1784, 2-U-1798).*

Authority to Restrict Operating Rights

THE Colorado commission, although refusing to sustain a complaint alleging abandonment of operating rights, held that it had jurisdiction of the complaint and that it had power to limit the number of vehicles that might be used. The commission made the following statement:

> While, generally speaking, it may be that the commission might not have authority to grant a certificate to a bus company to operate over a regular route, between fixed termini and at scheduled times, and at the same time place a condition in the certificate that only a limited number of busses could be used, yet in our opinion the business of a sight-seeing operator presents a different problem. The latter operations are irregular and are operated on call and demand and during the tourist season. They are somewhat analogous to the business of taxicab operations.

The burden was said to be upon the complainant, and this burden had not been met. The commission did not consider that nonuser alone was sufficient to prove abandonment of rights. The mere fact that a sufficient number of customers did not call upon the operator for service was not sufficient to justify a finding of abandonment of any portion of the authority granted.

The commission did not consider it proper to reëxamine the question of public convenience and necessity, so as to reduce the amount of equipment that the respondent might use, without considering the question as a whole and as it applied to all sight-seeing operators after an investigation and a general hearing. *Rocky Mountain Motor Co. v. Davis (Case No. 4867, Decision No. 18577).*

Prohibition against Payment of Underwriting Fees To Affiliate Upheld

THE circuit court of appeals, in affirming an order of the Securities and Exchange Commission holding an underwriting company to be an affiliate of, and not entitled to underwriting fees from, a light and power company, discussed several sections of the Holding Company Act and their relation to the

rule promulgated by the commission prohibiting the payment of such fees.

The underwriter, in objecting to the validity of the rule, alleged that one must be an affiliate for all purposes or for none at all, whereas the rule limited a finding to the transaction in issue. But the rule was held to be valid by both the commission and the court although it did limit a finding as to subsidiary status to the transaction in issue.

The underwriter argued that § 2(a)(11)(D) of the Holding Company Act required a finding of affiliation to be necessary or appropriate in the public interest or for the protection of investors or consumers and that no such evidence was introduced. The court replied:

> This argument may be answered, first, by noting that petitioner was given full opportunity to introduce any evidence on this point which it had, and, second, by observing that the commission specifically found that its order was in the public interest. We see no reason for the commission to adduce special evidence on the point. "Maintenance of competitive conditions," as stated in § 12(f), is enough public interest; and if the commission was justified in finding a likelihood of absence of arm's-length bargaining, interference with "maintenance of competitive conditions" follows as a matter of course.

In conclusion the court stated that the validity of the rule could not be attacked on the ground that the commission withdrew it shortly after determining the status of the underwriter, since the commission did so because it found the rule not stringent enough and substituted a new rule making competitive bidding for securities mandatory. *Morgan Stanley & Co., Inc. v. Securities and Exchange Commission, 126 F(2d) 325.*

Commission Denies Subpoenas for Testimony On Purpose of Consent Decree

A MOTION by Columbia Oil & Gasoline Corporation for the issuance of subpoenas to obtain the testimony of former employees of the Department of Justice for use in proceedings under the Holding Company Act was denied by the Securities and Exchange Commission.

The proceedings relate to a proposed exchange between corporations in the Columbia Gas & Electric system. They include the surrender to Columbia Oil of cumulative participating preferred stock held by Columbia Gas in exchange for the transfer to Columbia Gas of all of the outstanding stocks and indebtedness of Columbia Oil's five wholly owned oil and gasoline subsidiaries. There are also involved questions relating to an equitable distribution of voting power among the security holders of Columbia Oil in accordance with the provisions of § 11(b)(2).

A principal question in the case is one of valuation. The commission is required to determine whether the exchange is fair. In passing upon issues in the § 11(b)(2) proceeding the commission must see that voting power distributed is not unfair or inequitable in the light of the respective interests of each class. Referring to the claim of Columbia, the commission said:

> In its motion, Columbia Oil states that it desires to obtain the testimony of these men concerning the "objectives sought to be achieved by the Department of Justice in the settlement of the antitrust suit and the purposes of the provisions of the Stipulation and Consent Decree which only set forth in a very general way the manner in which Columbia Oil was to be recapitalized." It is applicant's contention that the recapitalization was intended by the Department of Justice to take control from the preferred stock and place it in the common stock, and that the Department of Justice intended that the common stock should be enhanced in value. Testimony to this effect, which applicant expects the witnesses to give, will, in the opinion of applicant, prove that the recapitalization "substantially increased the value of Columbia Oil common stock, and is vital to the issue of the relative values of the preferred and common stocks."

This testimony, said the commission, is clearly irrelevant to the issues in the case. The value at issue was said to be the present value of the preferred and common stock. The objectives of the Department of Justice and the intentions of the antitrust division had, in the opinion of the commission, no bearing upon present value, and evidence of that nature, it was believed, would do no more than obscure the record. The same considerations were said to apply to the issues under § 11(b)(2). Voting power distribution must be based on the present interests of the respective classes of security holders.

No request for subpoenas had been made to the trial examiner as permitted by Rule V(f) of the commission's Rules of Practice. This rule does not require a showing of reasons or a statement of what is to be proved. It was said to be the settled policy of the commission that, upon request, subpoenas *ad testificandum* are issued by the trial examiner as a matter of course. Had counsel seen fit to address an ordinary request to the trial examiner, the motion for subpoenas would not have been necessary. As to a suggestion that since the motion had been made the commission had a responsibility toward the men sought as witnesses and should protect them from undue incursions upon their time, the commission replied:

> Our Rules of Practice, on the other hand, place such responsibility squarely on the party who calls the witnesses. The practice which we have followed with respect to subpoenas *ad testificandum* is in conformity with Rule 45 of the Federal Rules of Civil Procedure, which requires the clerk of the court to issue subpoenas on the request of a party without any showing as to the purpose of the request. We are not disposed to depart from this general practice, which is designed to insure equality of treatment to all parties in proceedings before us.
>
> In view of our opinion that the testimony proffered by Columbia Oil is irrelevant, we assume that counsel will not desire the issuance of the subpoenas in question.

Re Columbia Gas & Electric Corp. et al. (File Nos. 59-33, 70-263, 371, 387, 430, 431, Release No. 3509).

Telephone Patron Not Entitled to Retain Particular Number

A COMPLAINT by the Hotel St. Francis in the city of San Francisco asking the California commission to restrain a proposed change of the hotel's telephone number from DOuglas 1000 to YUkon 2131 was dismissed. It seemed to be conceded that the proposed change was not arbitrary or capricious but was taken solely for the purpose of meeting exigencies arising from the greatly increased traffic demands.

The patron alleged that the present number had been retained for more than thirty years and that its continued possession was of great value to the hotel. It further alleged that in so far as it may have become necessary for the company to make changes in its central office equipment and assign new numbers for the purpose of relieving existing traffic congestion, such congestion was not attributable entirely to the increased use of service by the hotel itself but by other large telephone subscribers. The company's tariff rule that a patron obtains no proprietary right to a particular number was not challenged. The commission said in part:

> The intricate mechanical equipment of a modern telephone plant is not designed to permit each subscriber the privilege of selecting a number agreeable to him or to retain for all time the number first assigned. The same is true of the name prefixed to the number, for both are but an identifying device by means of which a multitude of telephonic connections may be made. The name prefix YUkon is merely a convenient way of expressing the 98 digit series. Obviously, there are but few names which begin with the letters YU. The word Yukon has no significance whatever.

Crocker Hotel Co. v. Pacific Telephone & Telegraph Co. (Case No. 4613).

Other Important Rulings

A SEWERAGE company which had been charging commission-made rates was held by the Pennsylvania Supreme Court to be protected from claims for reparations only until the date when the commission, acting under its statutory authority, declared such rates to be unreasonable and ordered their reduction, notwithstanding that such order was appealed from and modified by the reviewing court and the tariff prescribed by the court was to become effective at a later date. *Cheltenham & Abington Sewerage Co. v. Pennsylvania Public Utility Commission, 25 A(2d) 334.*

The Pennsylvania commission dismissed a complaint asking for a water main extension to prospective customers using wells. It was estimated that there would be a net annual operating loss of $438 and no return to the company for construction costs invested in the extension. No action had been taken by city officials toward simultaneous construction of water lines and sewer lines to reduce cost. Commissioners Buchanan and Beamish dissented. *Brown v. Scranton-Spring Brook Water Service Co. (Complaint Docket No. 13620).*

The Rhode Island Department of Business Regulation granted a petition of the Rhode Island Department of Public Works, division of roads and bridges, acting as construction agent of the Federal government, for authority to establish a highway grade crossing upon a showing that the Federal government was urging the granting of the application in order that the Navy Department be not restricted in preparation for moving men, equipment, and supplies rapidly, although the department stated that highway crossings at grade for obvious reasons should be permitted only in extremely urgent cases. *Re Director of Public Works of Rhode Island (Docket No. 420).*

The Arizona commission authorized an amendment to operating rights to grant permission to transport passengers and baggage in busses for a sight-seeing and tour service where present rights were limited to the operation of touring cars, overruling an objection that a statutory prohibition against the grant of certificates in occupied territory applied to carriers to whom operating rights had been transferred. *Re Tanner Motor Tours, Ltd., of Arizona (Docket No. 6854-S-4690, Decision No. 13448).*

The interruption of service because of bankruptcy of an applicant for a certificate under the "grandfather" clause of the Motor Carrier Act was not one over which the applicant had no control within the meaning of that act, and, therefore, such interruption was held to be a proper basis for denial of the certificate by the Supreme Court of the United States. *Gregg Cartage & Storage Co. et al. v. United States et al.*

The Securities and Exchange Commission denied applications by security holders and their representatives to intervene in proceedings under §§ 11(b)(2), 15(f), and 11(e) of the Holding Company Act but granted participation to the extent of cross-examining witnesses, introducing evidence, filing briefs, and making oral argument. *Re Jacksonville Gas Co. et al. (File Nos. 59-43, 54-47, Release Nos. 3469, 3470, 3472-3475).*

The Securities and Exchange Commission, upon finding that the United Gas Improvement Company had disposed of all of its direct or indirect holdings of securities of Artic Ice Company, dismissed the Artic Ice Company as a party to a proceeding pursuant to § 11(b)(1) of the Holding Company Act relating to the holding company system. *Re United Gas Improvement Co. et al. (File No. 59-6, Release No. 3484).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

Titles and Index

TITLES

INDEX

Re Washington Gas Light Company

[Order No. 2185, Formal Case No. 314.]

Service, § 150 — War restrictions — Gas for space heating.

Service schedules of a gas utility should be amended in order to restrict gas service for house or building heating installations where gas is the principal fuel used for such heating, on the basis of installations as of a date prior to the date set for such restriction by the War Production Board, when the maximum demand, actual and potential, in relation to the plant capacity of a utility makes such limitation necessary.

Public utilities, § 6 — Regulations of war authority.

Discussion of the necessity of utilities complying with orders of the War Production Board which may have the effect of suspending orders, rules, and regulations of a regulatory Commission, p. 68.

Evidence, § 1 — Ascertainable facts — Speculation.

Discussion of the desirability of basing decisions on presently ascertainable facts instead of relying upon figures in the realm of speculation, where such facts have become available since the date of hearing, p. 70.

Discrimination, § 75 — Old and new customers — Gas for space heating.

Discussion of discrimination resulting from war restriction of gas for space heating, favoring present users as against newcomers, p. 72.

(HANKIN, Chairman, concurs in part and dissents in part.)

[March 24, 1942.]

HEARING *on new schedules of service for general building heating purposes filed by a gas utility restricting new installations; amended schedules approved.*

By the COMMISSION: On February 2, 1942, the Washington Gas Light Company filed with the Commission proposed new schedules of service for general building heating purposes. The schedules proposed by the company would make gas available for house or building heating installations where gas is the principal fuel used for such heating, and where the premises were fully equipped for gas heat prior to February 1, 1942, or, if under construction, central gas heating equipment was on hand or contracted for as of that date. The proposed schedules have no effect upon use of gas for domestic purposes. By Order No. 2168, dated February 4, 1942, the Commission disapproved the schedules pending further action by the Commission, and gave notice of a public hearing to be held on February 17, 1942, on the company's application.

Under date of February 16, 1942,

the War Production Board, by its Division of Industry Operations, released its Limitation Order No. L–31, wherein it was recited that, because of the increased gas requirements for war production and civilian uses, and because of scarcity of materials for the construction of pipe lines and other facilities, shortages of natural gas have occurred in certain areas of the United States and are threatened in others; and further, that the demand for natural gas in many areas will increase beyond the capacity of existing facilities to meet such demand; and that the limitations upon deliveries of natural gas and the integration of gas system operations were found necessary in order to maintain gas deliveries to war industries and essential civilian services. The order prohibited utilities from delivering and consumers from accepting delivery of natural gas or mixed natural and manufactured gas in the areas specified, including the District of Columbia and the adjoining states, for the operation of central space heating equipment or for heating equipment supplying the major portion of the heating requirements of the premises, "unless such equipment was installed prior to March 1, 1942, or unless, in the case of new construction, the equipment was specified in the construction contract, and the foundation under the main part of the structure in which the equipment is to be installed was completed prior to March 1, 1942; . . ."

The order provides that any person affected by the limitations who considers that compliance therewith would work an unreasonable hardship on him may appeal for relief to the Director of Industry Operations, who is authorized to grant such specific exemptions or take such other action as would be consistent with the purposes of the order.

In short, the Washington Gas Light Company has requested this Commission to put into effect as of February 1st limitations as to the sale of gas for space heating one month before the effective date of such limitations set forth in the War Production Board's order. It, therefore, becomes necessary to consider carefully the maximum demand, actual and potential, in relation to the plant capacity of the company in order to assure ourselves whether or not the action requested should be taken by this Commission.

Testimony in the record shows that the company's present capacity as to daily send-out is 112,000,000 cubic feet of gas. The company now has on order and proposes to install 12,000,000 cubic feet additional generating capacity which would raise the generating capacity for the year 1942-1943 to 124,000,000 cubic feet per day.

The record shows that the park and planning commission has estimated that during the year 1942 there will be an increase of 85,000 government employees in Washington, resulting in an estimated increase in population of 250,000, which will involve between 50,000 and 60,000 additional housing units. The estimate of additional housing units to be required was discounted by the company to 40,000, of which 8,400, in the opinion of the company, would ordinarily use gas for heating purposes. It was further estimated by the company that in order to furnish gas to its present customers plus any such number of new housing

units would require 132,000,000 cubic feet of gas on the basis of a maximum day demand, or 8,000,000 cubic feet in excess of the contemplated plant capacity to be available in 1942–1943.

With the War Production Board's order in effect, the addition of 8,400 space heating units is not anticipated. The record shows that during January, 633 new house heating customers were added to the lines and that 876 dwellings were fully completed and equipped for gas heat but not yet connected with the lines, and in addition there were approximately 300 dwelling units under construction on February 1st, designed and built for gas heat. The above figures show that 1,809 space heating customers would be added to the load existing on January 1st, and since 633 were added in January, there remain 1,176 space heating units that will come on to the line if the limitation were made February 1st, as requested by the company.

The record further shows that if 1,800 space heating customers should be added to the load as of January 1, 1942, the estimated maximum day send-out for the 1942–1943 heating season would be 120,700,000 cubic feet of gas, while the planned generating capacity, as previously stated, will be 124,000,000 cubic feet. This leaves a very small margin of safety.

It is true that in calculating a maximum day demand, the company employed a day during which the temperature would be 5° above zero for the full twenty-four hours, which, in view of the rarity of such days, appears very conservative. It is equally true, as has been pointed out in the record, that the output on a day with a higher temperature but with a strong wind might well be greater than the output during a day with a lower temperature and a light wind. Moreover, the Commission feels that it is within its province to insist that the consumers of the District of Columbia be protected through conservative management of utilities within its jurisdiction, in order that there may be no disruption of such vital services. It is not difficult to imagine the serious inconvenience which might have been caused to many of the residents of the District, for example, on January 7, 1942, if there had been, coupled with an actual demand of 101,000,000 cubic feet (generating capacity 112,000,000), a serious breakdown in any of the existing generating facilities or in the supply of natural gas upon which the company depends. The temperature on January 7, 1942, was 12°. In this connection, if the War Production Board had not issued its restrictive order already described, it would have been incumbent upon this Commission to fix a limitation upon the demand for space heating units in order to obviate the danger of a shortage occurring during the ensuing year.

In view of the foregoing, it is believed that consideration should be given to the question of establishing a date for termination of additional space heating load prior to that set forth in the War Production Board's order. The record contains no information as to the difference in the load if the limitation date were made in the middle of February or on the first of March other than the estimate that the number of space heating units would be considerable, ranging from 1,000 to 2,000 units. Even if the number of

additional units added with the limitation set on March 1st be only 250 dwelling units above the number with the limitation fixed at the middle of February, the increase in the maximum send-out computed on the basis of the unit figures appearing in the record would be approximately 600,000 cubic feet of gas per day. With the small margin between the estimated plant capacity and the estimated demand, with the addition of 1,800 space heating units expected to be added to the load as of January 1st by setting the limitation on February 1st, the Commission deems it essential that the earliest practicable date be set for the limitation of additional space heating units.

The Commission believes that the general building heating schedules should be limited to constructions where the foundation under the main part of the structure in which the equipment is to be installed was completed on or before February 18, 1942, which is the day following the date of our hearing on this matter, or where contracts entered into before that date provided for gas heating. The Commission also believes that provision should be made for appeal for any person affected by this order, in so far as it pertains to the period from February 18, 1942, to March 1, 1942, where compliance therewith would work an exceptional and unreasonable hardship, and that provision should be made for exemption in such cases.

An appropriate order will issue.

HANKIN, Chairman, concurring in part, and dissenting in part: I agree with the opinion and order of the Commission in so far as it eliminates space heating for new installations beginning with March 1, 1942, as provided in War Production Board Order L–31. Our orders, rules, and regulations must be complied with by the public utilities only to the extent that they may lawfully do so. Since Order L–31 of the War Production Board is a valid order, issued under an act of Congress, it goes without saying that the Washington Gas Light Company must comply with this order, which suspends our schedules relating to space heating as of March 1, 1942. While the changes sought by the Washington Gas Light Company to that extent go into effect automatically, i. e., without any action on our part, there is no harm in issuing an order adopting the terms and conditions of the War Production Board order.

I also agree with the opinion and order of the Commission in so far as it denies the application of the Washington Gas Light Company for a limitation of the space heating schedule, to take effect as of February 1, 1942, although the Commission assigned no reasons for the denial of the application to that extent. It is evident that the company has not adduced any evidence which would warrant our advancing the date of the prohibition contained in the War Production Board order to February 1, 1942.

I am constrained to dissent from that part of the opinion and order of the Commission which advances the prohibition contained in the War Production Board order to February 18, 1942, for two reasons: (1) there is no evidence to support any findings which would lead to the conclusion and order adopted by the Commission; and (2) the order effects a discrimination as be-

tween persons and localities in the District of Columbia, which discrimination is forbidden by law. The substance of the relief granted is comparatively small but the principles involved are great. Hence this dissent.

(1) The Washington Gas Light Company filed an application for a change in schedules of service proposing the elimination, for the duration of the emergency, of space heating for new installations, and asked that the elimination be made effective as of February 1, 1942. The application was filed on February 2, 1942, when the company was faced with the possibility of increases in demand of gas for space heating during 1942–43, with no restrictions whatsoever. On February 16, 1942, however, War Production Board Order L–31 prohibited any gas company within certain enumerated jurisdictions, including the District of Columbia, from delivering gas "for the operation of central space heating equipment . . . unless such equipment was installed prior to March 1, 1942, or unless, in the case of new construction, the equipment was specified in the construction contract and the foundation under the main part of the structure in which the equipment is to be installed was completed prior to March 1, 1942."

This changed the picture entirely. The company was no longer confronted with the possibility of a greater space heating demand on account of new installations, except as to those which were without the provisions of the War Production Board.

On February 17, 1942, a hearing was held in this matter, at which the Chairman presided. Despite the provisions of the War Production Board order, the company proceeded to introduce evidence as if the War Production Board order had not been in existence. The company's vice president and general manager testified that the present capacity of the company's plant was 112,000,000 cubic feet per day; that, under the present plans, the company will have a generating capacity of 124,000,000 cubic feet per day in 1942–43; that some 40,000 new dwelling units will need gas service in 1942; and that if there were no restriction imposed, the maximum day demand would be 132,000,000 cubic feet per day, or 8,000,000 cubic feet in excess of the plant capacity.

The estimate of 40,000 dwelling units was not based on facts, but upon a casual reference to the testimony of a representative of the park and planning commission before the house committee on public buildings and grounds to the effect that he expected an increase of some 250,000 in population in 1942, and that 50,000 to 60,000 new dwelling units would be required to house these people.[1] From this the witness deduced that 40,000 dwelling units will actually be constructed, and that of these 12,000 units will be constructed in 1942, of which 8,400 will require gas heating. Again, this was an estimate without support in fact. It is upon such evidence that the witness arrived at the figure of an added demand of 14,300,000 cubic feet for the maximum day demand for space heating, in addition to an added demand of 4,400,000 cubic feet for domestic use, making a total maximum day demand of 132,000,000 cubic feet.

[1] The facts upon which that estimate was made are not of record in this proceeding.

But all this testimony was irrelevant, because it was based on the assumption that there would be no restriction, whereas, in fact, the War Production Board order imposed great restrictions. The majority opinion recognizes the irrelevancy of these figures when it states that "with the War Production Board order in effect, the addition of 8,400 space heating units is not anticipated." Nevertheless, the above facts are recited in the opinion as a foundation for the order adopted, for reasons incomprehensible, unless it is to add an appearance of seriousness to the problem presented.

Since at the beginning of the hearing, over which I presided, I pointed out to the applicant that the evidence must relate to the facts in the light of the War Production Board order, the company's witness tried another line of attack. Starting with a maximum day demand of 113,000,000 cubic feet for 1941, he testified that as of February 1, 1942, 1,800 units were to be added to the lines, which would raise the maximum day demand to 120,700,000 cubic feet, leaving a margin of 3,300,000 cubic feet, or 2.7 per cent, and that this was an extremely low margin of safety. To this the witness added that if the changes in schedules were not made effective until March 1st, the way would be open to an unknown amount of increased load and to a corresponding reduction in the margin of safety.

Upon further questioning, the witness lost all ability to estimate. While he was very ready to estimate as to the 8,400 units if there were no restrictions, he could not tell how many of that number would require space heating if the restrictions were made effective as of March 1st. Pressed further, he admitted that the number of new units would be between 1,000 and 2,000, a difference of a mere 100 per cent. Here again he was at a loss to know how many of these could be expected to be constructed in the District of Columbia, as distinguished from the metropolitan area.

Finally, it was assumed that the number of new units in the District would be some 60 per cent, or 900 units, if 1,500 were to be constructed. On this basis it was calculated the increase in demand for space heating would be only one-ninth of the 14,300,000 cubic feet estimated by the witness, or less than 1,500,000 cubic feet. The result was that the estimated maximum demand of 132,000,000 cubic feet immediately slid down to 122,000,000 cubic feet.

All these figures are in the realm of speculation. But why speculate? Now that March 1st, the effective date of the War Production Board order, has come and gone, it would be simple enough to ascertain the actual demands for space heating attributable to new installations contracted for during the month of February or any part thereof. After all, the decisions of the Commission looking in futuro should be based upon presently ascertainable facts. Smith v. Illinois Bell Teleph. Co. (1930) 282 US 133, 161, 75 L ed 255, PUR1931A 1, 51 S Ct 65. Here, however, there seems to be a studied purpose to get away from the facts and to rely on estimates which are mere guesses.

The only pertinent fact of record is that the maximum actual demand for the company's entire system occurred on January 7th, last, and amounted

to 101,000,000 cubic feet. This left a safety margin of 11,000,000 cubic feet, or 10 per cent, based on the present generating capacity. If we were to add 4,400,000 cubic feet for estimated additional domestic demand, 3,100,000 cubic feet for estimated additional heating demand of 1,800 units contracted for before February 1st, and 1.5 million cubic feet for estimated heating units contracted for during the month of February, then the total maximum demand would be 109,700,000 cubic feet. This would leave a margin of 14,300,000 cubic feet, or 13 per cent of the estimated generating capacity for 1942–3. How different this is from the margin of less than 2.7 per cent, as to which the company makes the extravagant claim that "it cannot take the responsibility"!

This is not all. The company's estimates were based on a maximum day demand. By "maximum day" the company's witness meant a day of twenty-four hours in which the maximum temperature is 5° Fahrenheit. Asked about the frequency of such days, the witness estimated that they occurred "every few years." Further questioning developed that there was only one such day in the past twenty-two years. The *fact* is that there was only one such day in the past seventy years. In other words, the probability of the demand for any one day of the three winter months in 1942–1943 being a maximum day demand is about 1/7000.

Since the probability of such temperature is so small, it was pertinent to inquire whether all difficulties might not be obviated by an appeal to the people in the metropolitan area of the District of Columbia to move their thermostats from as high as 75° to 70°, 68° or even 65° on such a day. At first the witness rejected the suggestion on the ground that the Weather Bureau does not give sufficient notice of such temperatures in time to inform the public. This, of course, was absurd. It is a matter of common knowledge that the lowest temperatures can be obtained from the Weather Bureau at least twenty-four hours in advance. With four daily newspapers and six radio stations in the District of Columbia, it should not be difficult to bring such news immediately to the attention of all users of gas for heating. Then the witness "estimated" that such an appeal would not have the desired effect, but, on the contrary, would have the opposite effect. When a question arose as to whether the people of the District of Columbia were so unpatriotic as to be spiteful in the use of gas in the national emergency, the witness was willing to revise his estimate and say that he did not "doubt that the people of the District of Columbia would attempt to coöperate."

Finally, the Commission's order advances the date of the War Production Board's order to February 18th. One will search the record in vain, however, for any fact which would serve as a reason for choosing this date, rather than any other. The fact that the 18th was the day following the hearing is no more a reason for setting that date than February 3rd, which was the day following the filing of the application. The Commission might as well have drawn a number from a lottery.

This is not an order based upon findings sufficient to support it, nor are the findings based upon competent evidence. The evidence introduced in

support of the application would not qualify even under the "scintilla of evidence" rule,[2] let alone under the "substantial evidence" rule,[3] by which we must be guided. If findings were based on competent evidence in the record, they would lead to the conclusion that the application must be denied.

Had the tables been reversed, and an order issued against the utility, with no more support than is found in the record made, the Commission would have been denounced as acting in an arbitrary, unreasonable, and capricious manner, and perhaps rightly so. It is my view that the rules of orderly judicial procedure should operate without respect of persons. The public is also entitled to protection.

(2) Aside from the question of sufficiency of the evidence to support the findings and order, I think that the Commission's order is null and void, because it is contrary to the expressed provision of our statute which prohibits discriminatory service by public utilities. True, the War Production Board is not limited by our statutory provisions as to discrimination. But we are. Without the War Production Board's order, and without any order on our part, the refusal of the gas company to furnish gas for space heating to any newcomers would undoubtedly amount to discrimination, forbidden by the statute. The company maintains that an order should be issued which would operate "equally" as to all newcomers. It overlooks, however, that newcomers are entitled to be treated equally with those who are already served. The failure to furnish gas to newcomers is none the less discrimination, though accomplished with the blessing of this Commission.

Since the order in question is not based upon evidence in the record, there should be no serious complaint, if it is pointed out (also on the basis of facts which are not in the record) that the order will further a real discrimination which for many years has existed as between localities in the District of Columbia. It is a matter of common knowledge that the northwest section of Washington has been the most favored section, and that the northeast and southeast sections have been least favored by the public utilities in the District. This is so in the taxicab zones and rates. This is so also in the mass transportation services. The southeast, especially Anacostia, may well be described as a "poor relation." Only recently have their needs become recognized. Now the new constructions, and cheaper constructions, are in these outer, poorer sections. By issuing this order, the people in these sections are the ones who will be cut off from space heating service by the Washington Gas Light Company. No matter how the order may be "worded," its essence is discrimination and, therefore, contrary to the statute. For this reason, I think it only fair that persons adversely affected by this order should have their day in court to test their rights.

But perhaps I am only fighting windmills. The order in question allows an exemption to any person affected, in so far as the order pertains to the period

[2] Interstate Commerce Commission v. Illinois C. R. Co. (1910) 215 US 452, 54 L ed 280, 30 S Ct 155.

[3] Consolidated Edison Co. v. National Labor Relations Board (1938) 305 US 197, 229, 83 L ed 126, 26 PUR(NS) 161, 59 S Ct 206 et seq.

from February 18th to March 1, 1942, where compliance would work an "exceptional and unreasonable hardship." No person adversely affected by this order may appeal to the courts without first exhausting his administrative remedies. He must first apply for an exemption. We can then save our face by granting the exemption. But the question will still remain: Why burden the poor people so unnecessarily?

ORDER

In accordance with the opinion rendered in this proceeding, it is *ordered*:

Section 1. That the first paragraph of "Schedule A—General Domestic Service Rate" of Order No. 2098 be amended to read as follows:

"Availability (Emergency Period)

"This rate is available for gas service in a single residence for any purpose except for central house and building heating."

Section 2. That the first paragraph of "Schedule B—General Building Heating Rate" of Order No. 2098 be amended to read as follows:

"Availability (Emergency Period)

"This rate is available for house or building heating installations where gas is the principal fuel used for such heating, and where the premises were fully equipped for gas heat prior to February 18, 1942, or, if under construction, central gas heating equipment was specified in the construction contract entered into prior to that date, and the foundation under the main part of the structure in which the equipment is to be installed be completed prior to February 18, 1942."

Section 3. That the first paragraph of "Schedule C—Commercial and Industrial Service Rate" of Order No. 2098 be amended by adding after the word "Availability" the words "(Emergency Period)," and by adding at the end thereof the following:

"It is not available for central heating installations where gas is the principal fuel used for such heating, unless the premises were fully equipped for gas heat prior to February 18, 1942, or, if under construction, central gas heating equipment was specified in the construction contract entered into prior to that date, and the foundation under the main part of the structure in which the equipment is to be installed be completed prior to February 18, 1942."

Section 4. That "Schedule F—Wholesale Apartment House Service Rate" of Order No. 2098 be amended by adding after the word "Availability" the following: "(Emergency Period)"; and adding at the end of the first paragraph the following sentence:

"It is not available for central heating installations where gas is the principal fuel used for such heating, unless the premises were fully equipped for gas heat prior to February 18, 1942, or, if under construction, central gas heating equipment was specified in the construction contract entered into prior to that date, and the foundation under the main part of the structure in which the equipment is to be installed be completed prior to February 18, 1942."

Section 5. That paragraph "2. *Application for Service*" under "General Service Provisions" of Order 2098 be amended to read as follows:

"2. Application for Service (Emergency Period)

"The company shall furnish service

to applicants under the filed rates and in accordance with these 'General Service Provisions' excepting service for additional house or building heating, which shall be limited in accordance with the 'Availability' clauses of the respective schedules. The company may require the signing of an application."

Section 6. That if any person affected by this order, in so far as it pertains to the period from February 18, 1942, to March 1, 1942, considers compliance therewith would work an exceptional and unreasonable hardship on him, he may apply to this Commission for such relief as may be consistent with the purposes of this order.

Section 7. That this order take effect immediately and continue in force and effect until further order of the Commission.

FEDERAL POWER COMMISSION

Re United Gas Pipe Line Company

[Opinion No. 71, Docket No. G-216.]

Service, § 214 — Abandonment — What constitutes — Removal of facilities.

1. The removal of natural gas pipe-line facilities by a company subject to the Natural Gas Act is an abandonment of facilities, within the intent and meaning of § 7(b) of the Natural Gas Act, 15 USCA § 715f, when the facilities are being utilized by the company in interstate transportation of gas to city gates for delivery to local distributing companies under the provisions of a rate schedule, p. 78.

Service, § 227 — Abandonment — Natural gas facilities — Proof required.

2. The Commission, on a petition for authority to abandon natural gas facilities of an interstate company, must have before it evidence upon which it may predicate the required statutory finding either (a) that the available supply is depleted to the extent that continuance of service is unwarranted, or (b) that the present or future public convenience or necessity permit such abandonment, p. 79.

Service, § 223 — Abandonment — Termination of contract.

3. The expiration or termination of a supply contract between a wholesale natural gas company subject to the Natural Gas Act and a local distributing company does not constitute grounds justifying abandonment of facilities used in such service, p. 79.

Service, § 215 — Abandonment — Necessity of authorization.

4. A wholesale natural gas company subject to the Natural Gas Act has no right to abandon either facilities or service rendered by means of such facilities, in supplying gas to local distributing companies, in the absence of approval of the Federal Power Commission after a hearing or hearings and the production of requisite evidence justifying the finding or findings prescribed by § 7(b) of the act, 15 USCA § 717f, p. 79.

Service, § 486 — Scope of proceeding — Abandonment — Intercompany contracts.

5. Whether an interstate wholesale natural gas company and a local distributing company are able or are unable to reach an agreement as to differences on the question of how long service will be continued is not an issue to be determined in a proceeding on application by the wholesale company for authority to abandon facilities used in supplying gas to the local company, p. 79.

Service, § 221 — Abandonment of facilities — Need of material.

6. Abandonment of facilities essential to rendering natural gas service at city gates, where gas is supplied to a local distributing company by an interstate wholesale company, is not justified by the fact that the wholesale company requires the salvaged material in other parts of its interconnected system, p. 81.

Service, § 227 — Abandonment — Public convenience and necessity.

7. Public convenience and necessity would not permit abandonment of facilities of an interstate natural gas company used in supplying gas to a local distributing company after dedication to public use over a long period of years, unless a showing is made that such use is no longer essential and that the facilities are no longer being utilized in supplying such service, or that the available supply of gas is depleted to the extent that continuance of service is unwarranted, p. 81.

[January 20, 1942.]

APPLICATION *for order permitting removal and relocation of certain natural gas pipe-line facilities; denied.*

APPEARANCES: C. Huffman Lewis and R. A. Shepherd, for the United Gas Pipe Line Company, applicant; George B. Pidot and J. W. Williams, for Peoples Gas Company, intervener; Sam E. Green, for the Railroad Commission of Texas; Edward H. Lange, for the Commission.

By the COMMISSION: This is a proceeding under § 7(b) [1] of the Natural Gas Act. It had its inception with the filing on September 24, 1941, of an application by United Gas Pipe Line Company [2] for permission for and approval of the removal and relocation of certain natural gas pipeline facilities situated in and near Port Arthur, Port Neches, and Nederland, Texas.

Upon petition of the Railroad Commission of Texas to participate in the hearing to be had on the said application and that such hearing be held at Port Arthur, Texas, the Commission entered its order on September 30, 1941, setting this matter for public hearing on October 21, 1941, at Port Arthur, Texas, and in said order also provided for the participation of the said Railroad Commission of Texas and other interested state Commissions in the said hearing, under § 67.4 of the Provisional Rules of Practice and Regulations under the Natural Gas Act. Pursuant to the provisions of said order, and after appropriate notice had been given, a public hear-

[1] 15 USCA § 717f; 52 Stat. 824.

[2] Hereinafter sometimes referred to as "United."

ing was had on October 21, 1941, at which hearing United presented its evidence and Peoples Gas Company,[8] the gas distributing company at Port Arthur, Port Neches, and Nederland, Texas, and environs submitted a petition for leave to intervene and was permitted to participate in the hearing subject to the action of the Commission upon said petition for intervention. By order, subsequently entered by the Commission, the said petition for intervention was granted. An appearance was also entered by the city attorney of Port Arthur, Texas, but nothing was offered by said city, except a request that "the removal of the natural gas facilities now used in serving consumers in Port Arthur should not be permitted, except with the express proviso that the new facilities be first connected and service started therefrom."

Pursuant to the Railroad Commission of Texas' formal designation, the director of gas utilities of that agency participated in said hearing as the representative of said Commission.

United is a corporation organized under the laws of the state of Delaware, with its principal office in Shreveport, Louisiana. It is authorized to do business in the states of Texas, Louisiana, Mississippi, Alabama, and Florida, and owns and operates an integrated natural gas transmission pipe-line system situated in the said states. It transports natural gas in interstate commerce and sells such gas in interstate commerce at various delivery points, or wholesale gates on its system for resale for ultimate public consumption for domestic, commercial, industrial, and other uses.

On February 3, 1928, United's predecessor company, Dixie Gulf Gas Company, entered into a written agreement with Peoples for the sale of natural gas to said Peoples at the city gates of Port Arthur, Nederland, and Port Neches, Texas, and environs, for resale. This agreement and subsequent additions and amendments thereto are on file with the Commission and are designated as United Gas Pipe Line Company Rate Schedule FPC No. 4 and Supplements thereto. By its terms the said agreement as supplemented provides that it shall remain in force and effect "until November 6, 1941, and thereafter until terminated by either party upon six months prior written notice to the other party"; it also provides, inter alia, that Peoples is given the option to purchase that portion of United's pipe line and equipment situated within the city limits of Port Arthur and utilized in connection with the delivery of natural gas in said city.

Under date of April 30, 1941, Peoples notified United that the said agreement for the sale and delivery of gas would expire at 7 o'clock A. M. on November 6, 1941, and that thereafter its (Peoples) requirements for natural gas would be supplied from another source; and on August 30, 1941, United filed with the Commission notice of the termination of said Rate Schedule as of November 6, 1941. This notice was followed by United's filing of said application for permission to remove and relocate the natural gas pipe-line facilities utilized in rendering natural gas service to Peoples.

During the month of October, 1941,

[8] Hereinafter sometimes referred to as "Peoples."

a number of communications were exchanged between Peoples and United, the general purport of which is that owing to an unavoidable delay in the construction of a new line through which Peoples proposes to obtain its future supply of natural gas, Peoples is expecting United to continue deliveries after November 6, 1941, at contract rates and until Peoples can connect its facilities with said new source of supply. Notice was also given to United that Peoples is exercising its option under the said contract to purchase the portion of the facilities situated in the city limits of Port Arthur, Texas, at the terms as provided for in the said contract. United, while recognizing the right of Peoples to exercise said option, did not amend its application to that effect but advised Peoples that the contractual relationship existing between the parties would terminate November 6, 1941.

At the hearing, United's vice president and general manager testified that if gas service to Peoples is discontinued by United, the pipe and other facilities described in the application and which are presently utilized for delivery of gas at the town borders of Port Arthur, Port Neches, and Nederland, Texas, and environs will no longer be in use, and that the removal of such facilities will not in any manner disturb United's deliveries of natural gas to oil refineries and other defense industries situated in that area since no portion of the facilities proposed to be removed are utilized in making deliveries to said industries; further, that if permission for the removal of said facilities is granted by the Commission, United proposes to utilize said pipe and equipment in other parts of its transmission system where it has recently experienced difficulty in obtaining such materials owing to other defense requirements.

Exclusive of the pipe and equipment covered by Peoples' option to purchase, the pipe which United proposes to remove is of various diameter sizes and if reduced to a 10-inch equivalent would amount to approximately 20,000 lineal feet; United estimates the value of this pipe and the other facilities at approximately $58,000, and its net salvage value at approximately $28,000. This pipe has been in the ground about thirteen years, during which period about 400 lineal feet have been replaced with new pipe. United claims that if service to Peoples continues through the winter of 1941–1942, about 4,500 lineal feet of pipe (not within that covered by the said option) will probably require repairs or replacement which it is estimated would cost approximately $10,000. While operation of facilities at a financial loss may be taken into consideration by the Commission in determining whether public convenience and necessity will permit the abandonment of such facilities, United does not contend and there is no substantial evidence in the record that the facilities here involved are being operated at a financial loss.

Although United relied upon Peoples' first notice of termination, it states that it does not desire to deprive the citizens of the said towns of a supply of natural gas and is willing to contract with Peoples to continue supplying the latter's requirements for some definite period of at least six months beyond November 6, 1941, but not

for the indefinite period that Peoples is requesting.

The parties have reached a deadlock concerning an extension of the time governing their contractual relations, because Peoples is unwilling to contract for its supply for as much as six months beyond November 6, 1941, claiming it is obligated to take its gas supply from its new supplier as soon as the construction of the new line is completed which date of completion is presently uncertain. The facilities employed by United (and which are proposed to be removed) are the only facilities presently in place and available for service of natural gas to consumers in the said cities or towns and environs; there is no evidence that the available supply of natural gas for service to the said cities and environs is depleted, nor is there any evidence that the said facilities are being operated at a financial loss by United.

Jurisdiction

[1] The application filed by United in this proceeding embodies a prayer, in the alternative, for a finding by the Commission (a) that the proposed removal of facilities does not constitute an abandonment of such facilities within the meaning of § 7(b) of the Natural Gas Act; or (b) if held to be an abandonment of facilities under said section of the act, that a public hearing be had as therein provided.

The applicable provisions governing this proceeding are to be found in section 7(b) of the act, which section reads as follows:

"No natural gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment."

In the present proceeding it has been clearly shown that United engages in the transportation of natural gas in interstate commerce through its integrated transmission pipe-line system which traverses the state of Texas, Louisiana, Mississippi, Alabama, and Florida and that it sells a very substantial portion of such gas for resale for public consumption for domestic, commercial, industrial, and other uses and that, therefore, it is a natural gas company within the meaning of the Natural Gas Act.

It has been further shown that the facilities which United desires to remove and relocate are being utilized by it in interstate transportation of gas to the city gates of Port Arthur, Port Neches, and Nederland and environs, where it sells such gas to Peoples[4] under the provisions of United Gas Pipe Line Company Rate Schedule FPC No. 4 and Supplements thereto for distribution and resale for domestic, commercial, industrial, and other uses in said cities and towns, and environs. The said facilities are, therefore, subject to the jurisdiction of the Commission and their proposed re-

[4] Under the provisions of said Rate Schedule FPC No. 4 and Supplements thereto, United supplies Peoples with the latter's *entire requirements* of natural gas, for resale in the named cities or towns and environs.

moval would constitute an abandonment under said § 7(b) of the act. United's prayer "that the Commission hold and rule that under the situation presented the proposed removal of said facilities is not an abandonment of facilities within the intent and meaning of § 7(b) of the Natural Gas Act" is, therefore, denied.

Nature of Proof Contemplated by the Statute

[2] In order to justify the granting of the permission requested by the United, the Commission must have before it evidence upon which it may predicate the required statutory finding, either, (a) "that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted," or (b) "that the present or future public convenience or necessity permit such abandonment."

It has not been shown that the available supply of natural gas for service to Peoples has been depleted, and, consequently, the applicant must present facts sufficient to support finding "(b)" above, if permission is to be granted for the removal of any portion of the facilities in question.

On the question of the present or future public convenience and necessity as to the abandonment of the named facilities, the record discloses that United and its predecessor company have supplied Peoples with the latter's requirements of natural gas for distribution and resale in Port Arthur, Port Neches, and Nederland, Texas, and environs since the year 1928; no other transporter presently owns or operates facilities for transportation or delivery of natural gas at the gates of said cities or towns.[5] The consumers served by Peoples are presently dependent upon the supply of their requirements of natural gas through United's facilities, and will continue to be so dependent not only until November 6, 1941, but for an indefinite period thereafter.

In Re Boston & M. R. Co. (1925) 105 Inters Com Rep 13, the Interstate Commerce Commission in denying an application for abandonment of certain railroad facilities stated (at pages 16 and 19):

"But irrespective of the origin of an existing line, people gather about it and create for themselves an interest in and a dependence upon it. Under these circumstances abandonment brings about the kind of hardships with which it is so difficult to deal. . . .

". . . the expense and hardship falling upon the community under this plan, not to mention the probable increase in transportation costs to the shipper or receiver of freight, particularly along the northerly portion of the line, would be disproportionate to the probable benefit that would accrue to the applicant from *abandonment* of service. Furthermore, . . . *it appears highly desirable to maintain the present facilities intact, at least until other satisfactory means of transportation for the entire route are assured.*" (Italics supplied.)

[3–5] Peoples' notice of termination of contract as of November 6, 1941, and the subsequent posting of

[5] The United States Census figures for the year 1940, of which the Commission takes judicial notice, give Port Arthur, Texas, a population of 46,140, and Port Neches, Texas, a population of 2,487; Nederland Texas, is a small unincorporated community, the population figures of which are not listed separately in the Census records.

notice by United do not permit United to abandon the *facilities* utilized in serving Peoples at the aforesaid city gates and environs. It is apparent from the evidence that both Peoples, when it first notified United of the proposed contractual termination date, and United in relying upon said notice, acted in good faith and believed at the time that the *contractual* relations between themselves under the agreement of February 3, 1928, and the supplements thereto would actually terminate on November 6, 1941; however, the expiration or termination of a contract does not constitute grounds justifying abandonment of facilities, nor would United be justified in assuming that, in the face of the mandatory provisions of § 7(b) of the act, either (a) the *facilities*, or (b) the *service* rendered by means of such facilities could be abandoned in the absence of approval of the Commission, after a hearing or hearings, and the production of requisite evidence justifying the finding or findings prescribed by the said section. Re Seaboard Air Line R. Co. (1934) 202 Inters Com Rep 543, 553.[6]

Subsequent to the time of the giving of said notice of termination, Peoples claims it was informed by its new supplier of gas that the proposed pipe line that is to connect with Peoples' distribution systems will not be completed until sometime after November 15, 1941. Peoples failed, however, to offer any further evidence on the subject of its proposed new source of gas.

Counsel for United in his opening statement frankly stated the position of his client, namely, that it "does not now and has never had any intention of depriving citizens of Port Arthur, Port Neches, and Nederland, Texas, of a supply of natural gas" and that "it is willing to contract with the Peoples Gas Company to continue to supply it with natural gas for a definite period of reasonable duration."

Whether the United and Peoples are able, or are unable, to reach an agreement as to their differences on the "question of how long this service will be continued,"* is not an issue to be determined in the present proceeding; Cf. Re Seaboard Air Line R. Co. (*supra*).

The decision of the Interstate Commerce Commission in the Seaboard Air Line Railway Case (*supra*) is cited, with approval, by the Supreme Court in its opinion in the case of Warren v. Palmer (1940) 310 US 132, 84 L ed 1118, 60 S Ct 865. At pages 137, 138, the court stated:

"Under the commerce clause of the Constitution Congress likewise has exercised its power to provide for the *continued operation* of interstate railroads such as petitioner.[4] The fact that the operator operates under a lease does not affect the force of the requirement that *the operation must*

[6] See also the recent opinion of the Supreme Court in the case of Illinois Nat. Gas Co. v. Central Illinois Pub. Service Co. (1942) — US —, 86 L ed —, 42 PUR(NS) 53, 58, 62 S Ct 384, in which opinion the Court states: "Section 7(b) prohibits the abandonment of the facilities of natural-gas companies without approval of the Commission."

* Subsequent to the conclusion of the hearing herein, it was brought to the Commission's attention that United and Peoples had entered into an agreement providing for the continuance of the contract of February 3, 1928, for the sale of gas by United to Peoples, without change in rate, for a certain limited period of time.

[4] Interstate Commerce Act, § 1(18), as amended."

continue until a certificate permitting abandonment is issued by the Interstate Commerce Commission."[5] (Italics supplied.)

[6] While the evidence here discloses that United is experiencing some difficulty in obtaining its requirements of pipe for use in its system, and that, if permitted to remove the named facilities, it proposes to utilize them where required in other parts of the said interconnected system, such claimed requirements would not, in the light of the present record, justify an abandonment of facilities essential to rendering natural gas service at the city gates of the above-named towns and cities and their environs.

[7] The facilities desired to be removed have been, by their actual use, dedicated to public service over a long period of years and have met the natural gas requirements of the named communities; until a showing is made that such use is no longer essential and that these facilities are no longer being utilized in the supplying of natural gas service at the town borders of Port Arthur, Port Neches, and Nederland, Texas, and environs, or that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, neither the present nor the future public convenience and necessity would permit their abandonment. Re Seaboard Air Line R. Co. (*supra*); Re Boston & M. R. Co. (*supra*); Chicago, R. I. & P. R. Co. (1934) 202 Inters Com Rep 164; Pennsylvania, O. & D. R. Co. (1939) 236 Inters Com Rep 490.

[5] Cf. Re Seaboard Air Line R. Co. (1934) 202 Inters Com Rep 543; . . ."

Findings

Upon consideration of the application filed herein by United, the petition in intervention filed by Peoples, the evidence of record adduced at the public hearing and the briefs filed, the Commission finds that:

1. The applicant, United Gas Pipe Line Company, is a corporation organized under the laws of the state of Delaware and is authorized to do business in the states of Texas, Louisiana, Mississippi, Alabama, and Florida, in compliance with the laws of those states; it is engaged in the business of transporting natural gas in interstate commerce and in selling natural gas in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, and other uses and is, therefore, a natural gas company within the meaning of the Natural Gas Act.

2. Intervener, Peoples Gas Company, purchases its entire requirements of natural gas at wholesale from United and distributes and resells such gas for domestic, commercial, industrial, and other uses in Port Arthur, Port Neches, and Nederland, Texas, and environs.

3. The natural gas sold by United to Peoples is produced in the states of Louisiana and Texas; the Louisiana-produced gas is transported by United into the state of Texas where it is commingled in United's transmission pipe lines with the Texas-produced gas and after having been so commingled is transported by United through the facilities proposed to be removed to the city gates of Port Arthur, Port Neches, and Nederland, Texas.

4. The Commission has jurisdiction

over United and the subject matter of its application for permission to remove certain of its pipe line facilities described in said application filed in the present proceeding.

5. The proposed removal of the natural gas pipe-line facilities described in the application filed in this proceeding will, if made, be an abandonment of facilities within the meaning of § 7(b) of the Natural Gas Act.

6. The facilities proposed to be removed are the only facilities of that nature presently available at the town borders of Port Arthur, Port Neches, and Nederland, Texas, and the environs of said communities for the rendering of natural gas service to a distributor, or distribution for resale in the said area.

7. The removal of the facilities described in the application would deprive consumers of natural gas in the said communities and environs of natural gas service presently supplied solely through the utilization of said facilities for an indefinite period of time, since no substitute facilities for rendering natural gas service to said consumers are presently in place, or available.

8. United has failed to sustain the burden of proof[7] to show that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit the abandonment of the named facilities.

An order will be entered in accordance with this opinion.

[7] The occasion prompting the filing of the present application is similar to that in Seaboard Air Line Railway Case (*supra*), in which proceeding the Interstate Commerce Commission denied the application, stating at page 553:

"It is clear from the record that the present application is a result of the failure of the parties to agree on the terms or formula on which the applicants would operate the line; that if they could agree on the terms the applicants would be willing to continue its operation; . . .

"*The burden of proof rests upon the applicants.* It has not been shown that the operation has resulted or will result in a loss to the applicants, thereby constituting a burden upon the applicants and upon interstate commerce; it is clear from the record that the public convenience and necessity represented by the interest of the communities served require the continued operation of the line; . . ." (Italics supplied.)

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Peoples Natural Gas Company

[Complaint Docket Nos. 11380, Sub. No. 20, 12683.]

Valuation, § 21 — Rate base.

1. Value for rate purposes must not be exclusively identified with any single factor, but all relevant facts of each case must be considered and given

such emphasis and such weight as will appear to work substantial justice for investor and consumer alike, p. 88.

Valuation, § 39 — Rate base — Reproduction cost factor.

2. The treatment to be accorded a reproduction cost estimate is not to determine the correctness of the specific figures, but to ascertain how closely the estimate corresponds with common sense, and to weight it accordingly, p. 89.

Valuation, § 39 — Reproduction cost — Material and labor costs.

3. The process of estimating material and labor costs, involving the taking of an inventory of various items and applying to them current day costs, does not result in a representation of the current value of a utility's currently used property because, among other things, quantities of material and labor are merely putative and current costs for many items are unobtainable, p. 89.

Valuation, § 123 — Overheads — Manner of cumulating.

4. A percentage allowance for engineering and superintendence during construction should first be applied to materials, labor, and land estimates, and to the total thus derived should be applied the percentage allowance for preliminary organization expense and for administration, legal expense, and taxes during construction, instead of applying all of these percentages to bare material, labor, and land costs, p. 91.

Valuation, § 135 — Overheads — Engineering and superintendence.

5. An allowance of 4.5 per cent was approved for engineering and superintendence during construction of a natural gas plant on the basis of material and labor, while 1.5 per cent was allowed on the basis of land, p. 91.

Valuation, § 144 — Overheads — Preliminary organization expense.

6. An allowance of 2 per cent was made for preliminary organization expense of a natural gas company, p. 91.

Valuation, § 161 — Overheads — Administration — Legal expense — Taxes during construction.

7. An allowance of 2 per cent was made for administration, legal expense, and taxes during construction of a natural gas utility, p. 91.

Valuation, § 140 — Overheads — Interest during construction.

8. Interest during construction of two natural gas plants was allowed, at the rate of 6 per cent per annum, for construction periods of one year and one-half year respectively, p. 92.

Valuation, § 114 — Overheads — Cost of financing.

9. Allowance for cost of financing must be restricted to the cost of floating funded debt, p. 92.

Valuation, § 114 — Overheads — Cost of financing.

10. The Commission in passing upon a reproduction cost estimate must form an opinion as to the amount of funded debt a company might have issued, although the company has no funded debt, in order to allow for cost of financing; but no allowance for cost of financing is includable in original cost when no evidence indicates actual expense for this item, p. 92.

Valuation, § 114 — Overheads — Cost of financing.

11. Cost of financing of a natural gas company for the purpose of a reproduction cost estimate was fixed at 3 per cent of the principal amount of funded debt, assumed to be 40 per cent of reproduction cost, p. 92.

Valuation, § 82 — Accrued depreciation.

12. A determination of accrued depreciation is a determination of the question how far property under the influence of wear and obsolescence has moved along the road from the condition of newness to the condition of junk, p. 93.

Valuation, § 98 — Accrued depreciation — Observation method — Mathematical formula.

13. Observed condition is not the sole measure of accrued depreciation, although to determine accrued depreciation by a mathematical formula, without the modifying influence which an actual examination of the property provides, is to disregard the realities, p. 93.

Valuation, § 96 — Accrued depreciation — Ascertainment.

14. Each past year of property life must be held accountable for the loss occasioned through depreciation, and it is not enough to take into account the realized depreciation which the first years of life contributed but not the potential depreciation which they have accumulated and which they will pass on as an inheritance to be realized in a subsequent year, p. 93.

Valuation, § 100 — Accrued depreciation — Age-life method.

15. Accrued depreciation was determined by the age-life method based upon testimony as to past conditions of service of items of property, physical condition of those units subjected to field inspection, and other elements affecting the ability of the units to continue to render a satisfactory public service, p. 95.

Valuation, § 36 — Rate base — Investment factor.

16. The amount of money put or left in a public utility property by its owners is given consideration in determining fair value for rate making, p. 100.

Depreciation, § 34 — Nature of reserve.

17. The depreciation reserve, which is the term applied to all reserves for future plant loss, is neither a measure of the physical depreciation of the property nor a mere bookkeeping entry, but the reserve is primarily an accumulation the purpose of which is to absorb losses incident to the retirement of property, p. 101.

Valuation, § 104 — Accrued depreciation — Reserve.

18. A depreciation reserve representing, according to verified reports of utility officers, amounts collected from consumers over and above profit, must be given due consideration, together with the manner of its accumulation, in a finding of fair value, p. 102.

Valuation, § 16 — Effect of expensed property.

19. The fact that expensed property (property the cost of which has been charged to maintenance instead of capital and recouped from consumers) is included in original cost as an element of rate base must be accorded appropriate consideration in a determination of fair value, p. 103.

Valuation, § 332 — Going concern value — Separate allowance.

20. No separate allowance need be made for going concern value, particularly where a claim for such value is not supported by proof of lag in earnings, p. 104.

Valuation, § 296 — Working capital.

21. Allowance should be made for cash working capital on the basis of a company's requirements as indicated by annual operating expenses and by giving consideration to the company's practices in receiving revenues for services and in making payments to vendors for operating costs, p. 106.

Valuation, § 300 — Working capital — Materials and supplies — Abandoned property.

22. An abandoned compressing station of a natural gas company should not be included in materials and supplies, as it is nonused fixed capital, although conceivably parts of a compressing station might properly be considered materials and supplies, p. 106.

Expenses, § 23 — Minor capital expenditures.

23. Innumerable minor items which, if carried through capital, would create an impossible accounting burden are allowable in operating expenses, p. 109.

Valuation, § 168 — Expensed property.

24. Innumerable minor items allowed in operating expenses instead of being carried through capital cannot at a later date metamorphose into capital as part of original cost for a rate-making determination, p. 109.

Valuation, § 36 — Rate base — Invested capital.

25. Invested capital, although not a direct factor in fair value determination, performs an important function by showing at what point a fair value finding would work a hardship upon the owners of utility property, serving as an important index of the minimum fair value, p. 109.

Return, § 26 — Reasonableness — Prevailing interest rates.

26. The fact that interest rates in general have trended steadily downward must be given consideration in determining a reasonable allowance for return, p. 114.

Return, § 22 — Reasonableness — Factors considered.

27. The determination of a fair rate of return for a natural gas utility should include a consideration of rates of return currently earned by competitive and unregulated business enterprises, present-day economic conditions, the financial history of the company, the nature of the natural gas industry, the territory served, and all other matters likely to affect the success of operations, p. 114.

Return, § 101 — Natural gas company.

28. A return of 6½ per cent on the fair value of natural gas property was held to be just and reasonable, p. 115.

Return, § 46 — Reasonableness — Effect on income tax.

29. Allowances for income tax were not considered as reducing the rate allowed for return, although such reduction would be proper, p. 115.

Expenses, § 48 — Dues paid to association.

30. Dues to a trade association must be excluded from operating expenses in the absence of information as to what services, if any, a company has received for such payment, p. 118.

Expenses, § 92 — Rate case expense — Amortization.

31. No reason exists to provide for further amortization of rate case expenses when the amortization period has expired and the rate case cost has been fully recouped, p. 118.

Expenses, § 28 — Establishing continuing property records — Amortization.

32. The cost of establishing continuing records of property, which are of permanent value, should be amortized over a 10-year period rather than a 5-year period, p. 118.

Expenses, § 114 — Federal income tax — Increases.

33. Cognizance is taken of the fact that Federal income tax rates have been increased under legislation pending a decision in a rate case, p. 118.

Depreciation, § 10 — Purpose of accumulation.

34. The sole purpose of providing for depreciation is to accumulate out of current revenues a reserved surplus, unavailable for dividends, into which eventual loss incident to retirement of property may be absorbed, and it is neither intended to pay for future replacements which may cost more than the property replaced, nor is it intended to provide a hidden profit, p. 119.

Depreciation, § 31 — Annual allowance — Estimated life.

35. Annual depreciation should be based upon estimated life predicated upon an actual examination of specific property, p. 120.

Expenses, § 5 — Powers of Commission — Payment to affiliates.

36. The Commission, although having no power to fix the price for gas moving in interstate commerce, is empowered to require an operating company to show that charges by affiliates are reasonable and to prescribe how much of the price paid shall be allowable as an operating expense, p. 123.

(BUCHANAN, Commissioner, dissents.)

[March 4, 1942.]

INVESTIGATION *of natural gas rates; rate reduction ordered and reparation required.*

By the COMMISSION: The Peoples Natural Gas Company, hereafter called the respondent, is a corporation serving natural gas to approximately 150,000 consumers in part or all of fifteen counties in western Pennsylvania. Its headquarters are in Pittsburgh.

The first company of this name was incorporated June 26, 1885, under the Act of May 29th of the same year (P. L. 29) entitled "An act to provide for the incorporation and regulation of natural gas companies." Thereafter that company acquired the properties of several other natural gas corporations through a series of so-called "long mergers," the last of which occurred on December 31, 1938, when the Columbia Natural Gas Company, hereafter called Columbia, and the Peoples Natural Gas Company, hereafter called Peoples, were merged to form respondent.

Peoples and its predecessors of the same name have been controlled by Standard Oil Company (New Jersey), hereafter called Standard, for many years. The same interests acquired control of Columbia in or be-

fore the year 1925, and from that year onward the stock of Columbia was owned by Peoples. These two corporations served contiguous and, in some cases, overlapping territories; both were under a common management from a common headquarters; and in practice they were operated much like a single entity.

On April 20, 1937, this Commission instituted separate inquiries into the rates of Peoples and Columbia, but these proceedings were combined into a single case (C. 11380, Sub. 20) after those companies merged to form respondent. Respondent had filed Tariff No. 18, adopting the tariffs of its predecessors as its own, so that the combined proceeding at C. 11380, Sub. 20, was directed against the same rates which Peoples and Columbia had been charging for service.

The situation became complicated when, on March 17, 1939, during the pendency of the inquiry into existing rates, respondent filed its Tariff No. 19 providing for increased rates, to be effective May 16, 1939. The Commission thereupon instituted an inquiry (C. 12683) into the reasonableness of the new rates, and suspended their effectiveness, at first for six months and later for three additional months, to February 16, 1940. Because of the similarity of issues, the proceedings at C. 11380, Sub. 20, and C. 12683 were consolidated and heard together.

On February 15, 1940, 33 PUR (NS) 113, a majority order of the Commission rejected the proposed rates on the ground that respondent had not sustained the burden of their justification. A minority opinion accompanying this order found that the record required further development before the issues could be decided, and that, in view of the reparation provisions of our act, the majority order was premature. An appeal having been taken from the majority order, the superior court, on June 24, 1940, reversed (Peoples Nat. Gas Co. v. Public Utility Commission [1940] 141 Pa Super Ct 5, 35 PUR(NS) 75, 14 A(2d) 133) and directed that we dispose of all of our rate proceedings against respondent in a single order.

On July 1, 1940, respondent made its new rates effective. In the meantime, the records in the rate cases were reopened for the introduction of additional evidence and, at the first hearing thereafter, respondent stipulated "to the effect that this case be decided on the basis of December 31, 1938, figures, and without considering additions, retirements, or depreciation made or accrued during the year 1939," and that the stipulation would relate only to the determination of a rate base or present fair value figure, and would not affect any consideration of operating revenues and expenses for the year 1939. To this stipulation, counsel for the Commission agreed. Hearings were concluded November 15, 1940, and the cases now await our disposition.

In deciding a rate case, the Commission must make findings upon three essential points. First, we must determine some value for the property which the utility devotes to the use of its customers (called the rate base); second, we must determine how much profit the utility shall be allowed to earn, expressed as a percentage of the rate base (called the return); and

finally, we must determine what allowances are to be made to the utility for expenses. The profit, added to the expenses, represents the amount which the utility may collect from its customers for service.

Of the three elements, the rate base is undoubtedly the most controversial, and the most difficult to determine. Hundreds, perhaps thousands, of books have been written about it, and the regulatory Commissions have been equally prolific in experiments intended to reduce the subject to simpler terms. All of these experiments, however, have failed when exposed to the test of court review. The courts, while they have issued a number of conflicting opinions upon certain elements of the rate base, have been unanimously steadfast in supporting what is known as the fair value theory, exemplified by the decision of the United States Supreme Court in Smyth v. Ames (1898) 169 US 466, 546, 42 L ed 819, 849, 18 S Ct 418. The substance of that decision is contained in the following excerpt:

"The corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it. How such compensation may be ascertained, and what are the necessary elements in such an inquiry, will always be an embarrassing question. As said in the case last cited: 'Each case must depend upon its special facts . . . .'

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation . . . must be the fair value of the propery being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it . . . than the services . . . are reasonably worth . . . ."

[1] This decision, and the many following it—including the recent Pennsylvania case of Solar Electric Co. v. Public Utility Commission (1939) 137 Pa Super Ct 325, 31 PUR(NS) 275, 9 A(2d) 447—show, either expressly or by inference, that the factors and processes which result in fairness in one case may result in gross unfairness to utility or consumers in another, and that value for rate purposes, therefore, must not be exclusively identified with any single factor. Our function is to consider all of the relevant facts of each case, and to give to each of them such emphasis in discussion and such weight in the final answer as will appear to work substantial justice for investor and consumer alike.

Because the relevant facts of this

case are numerous, it is appropriate to include the following guide to the remainder of this order:

I. The elements of fair value
   A. Reproduction cost
   B. Original cost
   C. Accrued depreciation
   D. Book cost and invested capital
   E. Depreciation reserve and Expensed property
   F. Going concern value
   G. Working capital
   H. Fair value
II. Rate of return
III. Revenues and expenses
IV. Findings and order

Under each section of Part I, the evidence pertaining to the subject will be stated, and will be followed by a discussion of its merits and demerits, together with our conclusion. In section H, these conclusions will be summarized and weighed to reach a fair value rate base.

I. The Elements of Fair Value

A. Reproduction Cost

Respondent takes the position that if all of the property, exclusive of working capital, which it used to serve the public on December 31, 1938, had been bought and installed at prices existing on that date, the cost would have been as follows:

Material, labor, and land	$62,363,418
Overheads	12,622,249
Going concern value	3,000,000
Reproduction cost new	$77,985,667

The element known as reproduction cost is peculiar, in that it is never factual, but an estimate based upon an hypothesis. Chief Justice Stone has emphasized the delusions and difficulties of reproduction cost, saying: "In assuming the task of determining judicially the present fair replacement value of the vast properties of public utilities, courts have been projected into the most speculative undertaking imposed upon them in the entire history of English jurisprudence. . . . Public utility properties are not thus created full fledged at a single stroke. If it were to be presently rebuilt in its entirety, in all probability it would not be constructed in its present form. When we arrive at a theoretical value based upon such uncertain and fugitive data we gain at best only an illusory certainty." Dissent in West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 689, 79 L ed 1640, 8 PUR (NS) 433, 449, 55 S Ct 894.

[2] Reproduction cost is therefore susceptible to neither outright proof nor outright contradiction. With the exception of certain factors to be discussed later in this section, the treatment to be accorded the reproduction estimate is not to determine the correctness of the specific figures, but to ascertain how closely the estimate corresponds with common sense, and to weight it accordingly.

[3] The process of estimating material and labor costs involves taking an inventory of the various items of plant—pipe, pumps, buildings—and applying to them current day costs. The result of such process (in conjunction with depreciation, to be discussed separately) purports to represent the current value of the utility's currently used property. Actually, it does not do so, not only—to mention two reasons among many—because the quantities of material and labor are merely putative, but also because

current costs for many items are unobtainable.

Consider, for instance, a pump which may have been installed in 1904 and is still operating. As in the case of practically all machinery, pumps and their prime movers have undergone radical change in design and efficiency, and consequently the 1904 type pump is no longer available by the ordinary methods of purchasing. Under such circumstances, the person preparing the estimate faces a problem which has three possible solutions. First, he may follow the so-called "substitute property" theory—he may take into his estimate the cost of a modern pump with the same output as the 1904 model; but if he does so he departs from the theory of costing the actual pump in service; moreover, the corollary of that procedure would be to allow the utility to charge customers for the cost of operating, not the old inefficient 1904 pump, but the modern pump of comparatively high efficiency. As a second choice, he may ask a manufacturer the cost to build a 1904-type pump today; but such a pump would have to be custom-made at a price much greater than a modern equivalent would cost—the result would not be representative for a pump in use, but for reproducing an antique; the utility itself would prefer a new modern pump to a new 1904 model, if the choice were to be made now. As a third choice, the estimator might determine the cost of the pump in 1904, and then adjust that cost through the use of a price index; but this procedure is difficult because price indices for many individual types of property, perhaps including pumps, are not available, and the Supreme Court of the United States has rejected the use of general commodity indices in such a process; West v. Chesapeake & P. Teleph. Co., *supra*. Moreover, the prices from year to year for pumps are for progressively different and better pumps, and do not represent prices for homogeneous articles, as in the case of pigiron, for example.

What has been said here as to our example of the pump is applicable with equal force to a very large portion of the components of any reproduction estimate. The labor of installation is subject to similar problems which have no wholly satisfactory answer. Returning to the pump for a moment, shall it be supposed that hand labor was used in building the concrete foundation, or shall account be taken of cheaper, more modern, mechanical methods? In either case, what definite basis exists for estimating the time required and hence the labor cost?

Aside from material and labor costs of existing property, there is a further questionable hypothesis in the basic idea that the plant as it is, developed through the years, would be planned the same way today. State v. Tri-State Teleph. & Teleg. Co. (1939) 204 Minn 516, 28 PUR(NS) 158, 284 NW 294, 310. Pipe layouts, for instance, would almost certainly be redesigned so that the routes traversed to render service would require the minimum of material. Compressor stations, used to boost gas pressures along pipe routes, might be larger but fewer. Other examples are numerous.

The difficulties and uncertainties inherent in reproduction costing procedure permit a wide latitude of judgment for the estimator, who therefore, however honest, generally selects those

alternatives which do the least harm to his employer. Every regulatory body and appellate court is familiar with the remarkable differences between the reproduction cost figures produced by estimators for contending parties. In the case before us, the reproduction estimate was prepared by Ford, Bacon and Davis, an engineering firm which does considerable work for Standard Oil interests on an annual retainer basis and was employed by respondent for the purposes of this case. The engineer in charge of the estimating was George I. Rhodes, who owns 102 shares of the stock of respondent's holding company, Standard. Witness Rhodes would be more than human if his estimates were not somewhat higher than those of a wholly independent investigator. See Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 US 290, 299, 300, 78 L ed 1267, 3 PUR(NS) 279, 54 S Ct 647.

There are some indications that labor costs used in respondent's estimate do not represent actual experience in the territory; that costs recently experienced by respondent were disregarded (see Clark's Ferry Bridge Co. v. Public Service Commission, 108 Pa Super Ct 49, PUR1933D 173, 165 Atl 261; [1934] 291 US 227, 78 L ed 767, 2 PUR(NS) 225, 54 S Ct 427); and that further criticism might be directed at other processes; but these are relatively unimportant when compared with the defects previously mentioned. We therefore make no adjustment of respondent's claim of $62,363,418 for materials, labor, and land, but we will weigh its qualitative value in reaching our fair value finding.

[4–7] Overheads in reproduction cost estimates are usually derived by applying percentages to bare material, labor, and land costs. Respondent has followed that practice and has applied the following percentages, but has excluded leaseholds and natural gas rights from the base to which they were applied:

Preliminary organization expense	2.0%
Administration, legal expense, and taxes during construction	2.0%
Engineering and superintendence; materials and labor	4.5%
Land	1.5%

The sums derived by applying these percentages were added to the base to obtain a new total. This total was then split as between property formerly owned by Peoples and that formerly owned by Columbia, and 7 per cent and 6 per cent respectively were added to the resulting amounts for interest during construction. To the over-all total 4 per cent was added to represent cost of financing.

Except for interest during construction and cost of financing, we accept respondent's overhead percentages as reasonable, but the manner of cumulating them is not representative of the manner in which they would be incurred if the property were being built today. We have accordingly changed the method of application by first applying to the materials, labor and land estimate (including leaseholds and natural gas rights), engineering and superintendence during construction of 4.5 per cent for material and labor and 1.5 per cent for land. To the total thus derived, we have applied 2 per cent for preliminary organization expense and 2 per cent for administration, legal expense, and taxes during construction. The total

reproduction cost estimate, up to this point, thus amounts to $67,753,119.

[8] For interest during construction, respondent assumed that to reproduce the Peoples property a construction period of two years would be required, during which 7 per cent interest would be incurred; for Columbia it assumed a one-year construction period, during which 6 per cent interest would be incurred. The estimated construction periods are satisfactory, but we allow interest at 6 per cent per annum, and on the premise that the property would be placed in service and produce revenue as completed, the effective interest periods for Peoples and Columbia are found to be one year and one-half year, respectively, for which 6 per cent and 3 per cent respectively, must be allowed. When these percentages are applied to the two portions of the $67,753,119 above representing the Peoples and Columbia properties, the resultant total is $71,380,177, as compared with respondent's total at this point of $72,127,080.

[9–11] Cost of financing is an overhead intended to represent the expense which would be incurred in financing the enterprise if it were to be reproduced today, subject to certain limitations expressed in Solar Electric Co. v. Public Utility Commission (1939) 137 Pa Super Ct 325, 358–360, 31 PUR(NS) 275, 298, 9 A(2d) 447, as follows:

"There may not be included the interest or discount paid to the purchaser of the security for the use of the money. A utility which devotes its property to a semipublic service undertakes to supply all the capital necessary for the efficient execution of the plan. It is compensated for this service by an allowance of a reasonable net return described in utility law as fair rate of return. It may not be compensated twice for the same service: Cheltenham & A. Sewerage Co. v. Public Service Commission (1936) 122 Pa Super Ct 252, 261, 15 PUR (NS) 99, 186 Atl 149. . . .

"We cannot agree with the contention of the respondent that it is entitled to capitalize the expense of marketing the stock of the company. It would confuse rather than simplify the process of rate making to treat the expense of marketing the common stock of the utility as cost of financing. That subject may better be considered under a different head. . . . We are of the opinion, therefore, as we have before indicated, that the cost of marketing the stock of the company is not a matter for capitalization as part of the rate base. The utility is compensated for the capital furnished by it in the fair return allowed."

Allowance for this overhead, therefore, must be restricted to the cost of floating funded debt. Actually, of course, respondent has no funded debt, but since we are dealing with an hypothesis that the property is being built today, we must form an opinion as to the amount of funded debt respondent might have issued, and allow cost of financing accordingly for reproduction cost. No allowance for cost of financing is includable in original cost since no evidence indicates *actual* expense for this item. Solar Electric Co. v. Public Utility Commission, *supra*.

Respondent's witness Bollard, a financial expert, discussed fully the possibilities of financing respondent.

He doubted whether any bonds could be sold by a company such as respondent, but stated that, if bonds could be sold at all, they could not exceed 40 per cent of the fair value of the property. On page 32 of Exhibit 20 this statement appears:

"I believe that at best a bond issue on this property would be salable for not more than 40 per cent of the aggregate value of property, net after depreciation, all at figures as approved by the Pennsylvania Public Utility Commission."

Since we are dealing with the cost of reproducing the property today, we will be somewhat more liberal than witness Bollard, and assume for the purposes of this hypothetical estimate that the respondent might issue bonds to the extent of 40 per cent, not of depreciated fair value, but of undepreciated reproduction cost.

In Statement B, Volume 18, Exhibit 11, witness Rhodes showed that, based upon annual reports of the Securities and Exchange Commission for the years from 1935 to 1937, the cost of financing natural gas companies, manufactured gas companies, and electric companies, averaged 2.94 per cent.

The relationship of respondent to Standard results in very much reduced costs for securities issues. On January 24, 1941, Securities Certificate No. 271 was filed with us by respondent, contemplating the issuance of $3,800,000 of stock at a total expense of $4,230 plus the expenses incidental to the securities certificate, the fee for filing of which is $10.

Under the circumstances, we are of the opinion that the cost of financing which respondent might incur if it were to undertake the issuance of bonds today would be 3 per cent of the principal amount thereof. Three per cent for the cost of financing 40 per cent of the reproduction cost, or 1.2 per cent of the entire reproduction cost, is $856,562. This amount, added to the $71,380,177 previously given, results in the sum of $72,236,739 for material, labor, land and overheads.

We find, therefore, that the reproduction cost of respondent's property at December 31, 1938, without deduction for accrued depreciation, was $72,236,739.

There is some evidence that a part of respondent's property is not used or useful in the public service, but the continuance of that status is so questionable, and the amount involved is so slight when considered in relation to the total reproduction estimate and other rate base factors, that no deduction will be made on this account.

B. Original Cost

Respondent, in Exhibits 26 and 38, claims that the original cost of all of its property in use at December 31, 1938, was $47,732,478, determined by applying costs at time of installation to the inventory used in developing its reproduction estimate. We do not question the accuracy of this figure, although the weight to be given it will be affected by the discussion contained in section E.

C. Accrued Depreciation

[12–14] We have said that rate base is the most controversial of the three major problems of rate making, and we may now add that the most controversial phase of that problem is the determination of accrued depreciation.

In this section we attempt to determine how far the property, under the influence of wear and obsolescence, has moved along the road from the condition of newness to the condition of junk. Knoxville v. Knoxville Water Co. (1909) 212 US 1, 53 L ed 371, 29 S Ct 148. Immediately we are faced with two contending schools of thought, one of which advocates the observational method, the other the age-life method, and since there is evidence from both viewpoints in the record, we must consider each of them.

The observational process is, in this case, exemplified by the testimony of witness Rhodes. Under his supervision, 1,479 observations were made of respondent's pipe lines, which exposed about 5,800 feet of pipe out of a total of 21,649,000 feet. In addition, 225 observations were made of service lines, the length of which is not included in the 21,649,000-foot figure. No details were submitted of record covering the determination of accrued depreciation as to any single piece of equipment or piping, or of any building. The witness in his testimony at all times avoided reference to specific items of the property but discussed hypothetical items instead. From this process witness Rhodes came to the conclusion that the property had depreciated 27.55 per cent, if costs of financing were left out of the base to which the percentage was applied.

Aside from the fact that witness Rhodes' observations were so limited in scope as to render his conclusions dubious (see Pacific Gas & E. Co. v. Devlin [1922] 188 Cal 33, 203 Pac 1058; State ex rel. Oregon-Washington Water Service Co. v. Hoquiam [1930] 155 Wash 678, 286 Pac 286), we think that his use of observed condition as the *sole* measure of accrued depreciation discredits what, when rightly used, is a very desirable procedure. To determine accrued depreciation by a mathematical formula, without the modifying influence which an actual examination of the property provides, is to disregard the realities and is therefore ridiculous. But equally ridiculous is the idea that any observer, no matter how well trained, can, by looking at a property, determine the precise percentage to which it has depreciated. The two processes are at opposite extremes, and both are beyond the bounds of common sense.

A further fallacy in using observation as the sole means of determining accrued depreciation may be illustrated by a consideration of respondent's evidence as to tin-enclosed gas meters of the type familiar to domestic consumers. From Exhibits 24 and 26, it appears that meters of this type in the Peoples system have an average age of about 22½ years, during which, says witness Rhodes, they have depreciated approximately 16 per cent. If witness Rhodes were of the opinion that each year of a meter's life contributes a uniform percentage toward the loss of its service value, the only inference to be gathered from his testimony would be that these meters have an average life of about 141 years, a service life longer than any other type of property in the system. A corresponding calculation for similar meters in the Columbia system gives a service life of 267 years. It is apparent from these results, and from witness Rhodes' testimony as to annual depreciation, that he does not believe each year's use is an equal contributor to-

ward final retirement of the meter, and therein, we believe, lies a fatal illogic of his method.

It is a commonly recognized fact that any property, be it a building, an automobile, or a meter, will appear to depreciate at a progressively more rapid rate. If a meter were observed at the end of its first, second, and third years of life, it might appear to have depreciated 1 per cent, 3 per cent, and 6 per cent, respectively, from its original newness, or, put in another way, the first year might appear to contribute 1 per cent depreciation, the second year 2 per cent, and the third year 3 per cent. An engineer following witness Rhodes' process would testify that, at the end of the second year, that accrued depreciation on that meter was 3 per cent, and that it was in 97 per cent condition. The fault of such a method and of such testimony is not that it would fail to disclose the truth, but that it would fail to disclose all of the truth. It takes into account the *realized* depreciation which the first two years of life contributed, but not the *potential* depreciation which they have accumulated and which they will pass on as an inheritance to be realized in the third year of life.

The third year of life will show a realized depreciation of 3 per cent—a loss greater than in either of the two preceding years—not because the meter will be used harder, but because the third year begins with a meter which is in only 97 per cent condition —a condition which is ascribable only to use during the two preceding years. It follows that those two years should be held accountable for the loss they have occasioned. Similarly, all of the first three years will pass on to the fourth year a property which is more susceptible to depreciation than ever before. It is this *potential* depreciation of which witness Rhodes takes no account, but which must, properly and logically, be charged up against the years which occasioned it. Thus it is clear that every year of a meter's life—every year of any depreciable property's life—contributes a sum of realized and potential depreciation which is equal to that of every other year. This brings us to a consideration of the age-life method, which recognizes the facts we have just cited.

[15] The age-life method of finding accrued depreciation is based upon two factors, one factual, the other estimated. Age, of course, is determinable directly from the records of dates when property was installed, and has been so determined in this case, from Exhibit 26. Life, on the other hand, intended to represent the term of years from date of installation to that date in the future when the property is retired from service, is necessarily an estimate, and its validity depends upon the processes used in reaching it. Like accrued depreciation itself, when estimated life is determined only by mathematical formula, or only by observation of present condition, the results are apt to be far from the eventuality. On the other hand, if consideration is given to the experience of many other owners with that type of property, to past trends and present inventions affecting obsolescence, and to the physical condition of the particular property upon actual examination, the result, when applied over a large number of items such as those of which respondent's system consists,

probably approximates within reasonably close degree the actual over-all life to be experienced.

The evidence of record as to the life of respondent's property comes from four sources. A first set of figures may be obtained by dividing the known ages of the property into Rhodes' observed depreciation, to obtain an annual percentage; then dividing this percentage into 100 to obtain total years of life. As we have shown, this process produces fantastic figures such as 141 and 267 years for tin meters, and 90 and 115 years for iron-enclosed ones. A second set of figures is obtained by dividing Rhodes' *annual* depreciation percentages into 100 to get estimated lives; none of these is greater than seventy-seven years, and many are only fifty years. A third set comes from the testimony of Commission witness Farstad. It may be noted in passing that the testimony of Farstad was based upon general tables for the classes of property involved—including tables of the Interstate Commerce Commission, the United States Bureau of Internal Revenue and those published in the recognized depreciation works of Marston & Agg, and Saliers,—but, like that of Rhodes, appeared to have little direct relation to the specific property here under consideration. A fourth represents the estimated lives which the officers of Peoples and Columbia have, for many years, set forth under oath in their annual reports to this Commission.

In July, 1937, and upon several later occasions, we asked respondent and its predecessors to furnish estimated lives for the purpose of these cases, but they have not been forthcoming.

We have given consideration to each of the available sets of figures, to the demonstrated knowledge of each witness as to the past conditions of service of the items of property, to the physical condition of those units subjected to field inspection, and to the other elements which affect the ability of the units to continue to render a satisfactory public service. Based upon that consideration, we have arrived at estimated lives which we will use in our calculations. These lives, together with the quantitative evidence upon which they are predicated, are shown in the following table: [table omitted].

When the ages shown by Exhibit 26 and our estimated lives are applied, account by account, to respondent's reproduction cost estimate as adjusted, the over-all figure for accrued depreciation is found to be 43.8 per cent. By a parallel process, the accrued depreciation related to the original cost estimate submitted by respondent is found to be 45.4 per cent. Similar computations using the lives set forth under oath in the Peoples' annual report for 1938 show corresponding accrued depreciation figures of 58.1 per cent for reproduction cost and 59.6 per cent for original cost. Opportunity to examine the computations leading to these percentages will be afforded if respondent so requests.

The slight variations between the results based upon original and reproduction cost occur chiefly because the reproduction cost estimate includes certain overheads which respondent never actually incurred and which it consequently did not insert in its original cost estimate. Since accrued depreciation is primarily a judgment

estimate (Lehighton Water Supply Co. v. Public Service Commission [1930] 99 Pa Super Ct 574), we will round both figures to 45 per cent, which thereupon becomes our finding as to the extent of accrued physical depreciation in respondent's property.

We are not unmindful of the situation disclosed by the high percentage relation of the book depreciation reserve to the book fixed capital, nor of its significance in accrued depreciation determination,[1] but it is not material where the large reserve is given effect in our consideration of the case, and we deem it more appropriate to defer detailed discussion of this item.

We find, therefore, applying the 45 per cent figure, that the reproduction cost ($72,236,739) less accrued depreciation ($32,506,532) of respondent's property at December 31, 1938, was $39,730,207. Similarily, we find that the original cost ($47,732,478) less accrued depreciation ($21,479,615) of respondent's property at December 31, 1938, was $26,252,863.

D. Book Cost and Invested Capital

There is presented below the balance sheet of respondent as it appeared on December 31, 1938, after giving effect to the merger of Peoples and Columbia on the same date:

The history of certain elements on

ASSETS AND OTHER DEBITS

Utility Plant		$37,784,783.97
Other Physical Property		1,499,205.27
Total Physical Property		$39,283,989.24
Deduct Applicable Reserves:		
Depreciation of Utility Plant	$25,813,507.57	
Amortization and Depletion of Producing Natural Gas Land and Land Rights	654,064.42	
Abandoned Leases	83,432.05	
Depreciation and Amortization of other Property	472,198.81	
Total Reserves		27,023,202.85
Total Physical Property, less Reserves		$12,260,786.39
Investments		56,494.63
Current and Accrued Assets		3,821,697.00
Deferred Debits:		
Columbia Natural Gas Company Plant Acquisition Adjustment		4,507,805.96
Other Deferred Debits		30,041.41
Total Assets and Other Debits		$20,676,825.39

LIABILITIES AND OTHER CREDITS

Common Capital Stock	$13,200,000.00	
Surplus	1,322,925.51	
Total Capital Stock and Surplus (Invested Capital)		$14,522,925.51
Advances from Standard Oil Company of New Jersey		5,120,000.00
Current and Accrued Liabilities		927,481.23
Deferred Credits		32,527.98
Other Reserves		73,890.67
Total Liabilities and Other Credits		$20,676,825.39

[1] New York Teleph. Co. v. Prendergast (1929) 36 F(2d) 54, 66, PUR1930B 33; Natural Gas Co. v. Public Service Commission, 95 W Va 557, PUR1924D 346, 121 SE 716, 723; Arkansas-Louisiana Gas Co. v. Texarkana (1938) 96 F(2d) 179, 185, 24 PUR

this balance sheet warrants discussion. In 1925, Columbia caused its property to be appraised at a figure $5,270,535 in excess of the cost, and this write-up was actually recorded in its fixed capital accounts, in violation of our system of accounts, and of recognized accounting practice, and in disregard of the fact that any appraised value, however accurate, is but momentary and a creature of fluctuating price levels. As a result of this action, the surplus of Columbia was inflated by the same amount, although it must be said, in mitigation of the company's intentions at that time, that the appraisal surplus was earmarked, not commingled with that other surplus arising from earnings to which dividends may lawfully be charged, and that both it and the fixed capital write-up were reduced to $3,893,222 by a series of reversing entries, apparently to amortize them at the same rate at which the true costs of the same property were being depreciated. These intentions were subsequently forgotten, however, for at a time when the earned surplus was inadequate to cover it, a liquidating cash dividend of $1,500,000 was declared and charged in its entirety against the appraisal surplus. As a result, the fixed capital accounts still carried the arbitrary write-up of $3,893,222, but the appraisal surplus which the company certainly should have retained to offset it had been reduced to $2,393,222, by the dissipation, not of write-up value, but of hard cash.

At December 31, 1938, Columbia had this appraisal surplus on its books as well as a deficit of $118,799 in its earned surplus account. Thereupon it proceeded to make certain adjusting entries, to create a "clean" balance sheet prior to its merger with Peoples. It desired to remove the write-up from its fixed capital accounts, but for reasons already explained, the surplus against which it should have been written off was deficient by $1,500,000. At the same time, it would have made an even worse picture to write off the difference to earned surplus for that account already contained a deficit of nearly $119,000, and such a charge-off would have raised this deficit to $1,619,000.

It happened that from its inception to December 31, 1938, Columbia had collected $8,024,478 from consumers toward offsetting depreciation losses, and it was decided that this was the place to absorb the write-up deficiency. It thereupon made entries which resulted in:

Reducing the reserves for depreciation by	$2,390,994	
Reducing the appraisal surplus to nothing from	2,393,222	
Writing off the appraisal of fixed capital of		$3,893,22
Changing the deficit of $118,799 in earned Surplus account into a surplus of $772,194 by crediting the account with		890,99

Summarizing the history of the $1,500,000, it began life as a record of an opinion that at one point in the transitory price level, Columbia's properties were worth more than their cost

(NS) 267 (certiorari denied, 305 US 606, 83 L ed 385, 59 S Ct 66); Railroad Commission v. Cumberland Teleph. & Teleg. Co. (1909) 212 US 414, 424, 425, 53 L ed 577, 29 S Ct 357; State v. Tri-State Teleph. & Teleg. Co. (1939) 204 Minn 516, 28 PUR(NS) 158, 2 NW 294, 313; Lindheimer v. Illinois Be Teleph. Co. (1934) 292 US 151, 169, 78 ed 1182, 3 PUR(NS) 337, 54 S Ct 658.

It then became cash which, when paid out as dividends, changed it into a loss. Its final metamorphosis made it a charge against a reserve created to absorb wear, tear, and obsolescence costs. Its mate in this final repository, which began as a deficit of $118,739, and changed into an earned surplus of $772,194, differs only in the number, rather than the peculiarity, of transitions.

The fact is that no matter how the reserve may have been violated, the actual accumulation in it from charges to operating expenses is $2,390,994 greater than appears upon the foregoing balance sheet. Its restoration results in the following:

The above balance sheet shows that the book cost of respondent's fixed capital at December 31, 1938, was $9,869,793, and since it is derived from the sworn reports of respondent and its predecessors to this Commission, which were made of record in this case, and since respondent did not contest their accuracy, we so find. The reasons for so low a book cost figure, relative to the values hereinbefore discussed, will appear in the next section of this order.

Before considering what further meaning respondent's balance sheet, as revised, may have in this case, two of the items thereon require explanation. The first item is "Columbia Natural

Assets and Other Debits		
Utility Plant		$37,784,783.97
Other Physical Property		1,499,205.27
Total Physical Property		$39,283,989.24
Deduct Applicable Reserves:		
Depreciation of Utility Plant	$27,553,776.88	
Amortization and Depletion of Producing Natural Gas Land and Land Rights	1,304,788.69	
Abandoned Leases	83,432.05	
Depreciation and Amortization of Other Property	472,198.81	
Total Reserves		29,414,196.43
Total Physical Property, Less Reserves		$9,869,792.81
Investments		56,494.63
Current and Accrued Assets		3,821,697.00
Deferred Debits:		
Columbia Natural Gas Company Plant Acquisition Adjustment		4,507,805.96
Other Deferred Debits		30,041.41
Total Assets and Other Debits		$18,285,831.81
Liabilities and Other Credits		
Common Capital Stock	$13,200,000.00	
Surplus (Deficit)	1,068,068.07*	
Total Capital Stock and Surplus (Invested Capital)		$12,131,931.93
Advances from Standard Oil Company of New Jersey		5,120,000.00
Current and Accrued Liabilities		927,481.23
Deferred Credits		32,527.98
Other Reserves		73,890.67
Total Liabilities and Other Credits		$18,285,831.81

*Red.

Gas Plant Acquisition Adjustment—$4,507,805.96." In 1925, Peoples acquired all of Columbia's capital stock (and consequently all of the equity) for which it issued $11,280,000 of its own preferred stock. Later, Columbia declared a partial liquidating dividend of $1,500,000 so that the net cost to Peoples of the Columbia equity was $9,780,000. At December 31, 1938, when Peoples and Columbia merged, it was found that the net assets of Columbia were only $5,272,194 (including the "earned surplus" already discussed), or $4,507,806 less than the $9,780,000 at which the Columbia stock was carried in the Peoples portfolio.

The other item, "Advances from Standard Oil Company of New Jersey —4 per cent Interest—$5,120,000," consists primarily of loans made by Standard and used by Peoples in liquidating its preferred stock issued in connection with the Columbia transaction. The two items therefore are complementary to each other. In this connection, we take judicial cognizance of Application Docket Nos. 33836 and 33837 filed in 1935, 11 PUR (NS) 20, wherein Peoples and Columbia sought our approval to continue the practice of depositing their surplus cash with Standard for investment. At that time (June 1, 1935) and for about twenty years prior thereto, the advances were in the opposite direction from those shown on the balance sheet above, so that Standard owed Peoples and Columbia an aggregate of $5,326,219.

[16] If we were to draw up a statement of the entire amount of money put or left in respondent by its owners at December 31, 1938, we would obtain the following results:

Capital Stock	$13,200,000
Deficit	1,068,068 (Red)
Advances from Standand ..	5,120,000
Less Columbia adjustment	4,507,806
Standard's investment ..	$12,744,126

If no account is taken of either the advances from Standard or the loss arising from the Columbia acquisition, the investment is represented by the capital stock and deficit, or $12,131,932. We believe that $12,744,126 is the more equitable figure to use, for it recognizes the existence of all the dollars belonging to the owners which remain in respondent, without regard to whether they represent permanent or temporary investments. This finding will be given consideration in our fair value section. Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 306, 77 L ed 1180, PUR1933C 229, 53 S Ct 637; West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 672, 79 L ed 1640, 8 PUR(NS) 433, 55 S Ct 894. See also New Street Bridge Co. v. Public Service Commission (1921) 271 Pa 19, 38, PUR1922A 404, 114 Atl 378, and Matamoras Citizens Water Co. v. Public Service Commission (1925) 86 Pa Super Ct 152.

Commission Exhibit 61 and oral testimony in connection therewith, submitted by witness McShea, assistant director of the Commission bureau of accounts, and a certified public accountant, is a series of statements showing the return earned on invested capital by Peoples during its entire history of fifty-five years, and by Columbia during its entire 15-year

history. It should be noted that witness McShea did not adjust his invested capital except for known write-ups, so that his base at December 31, 1938, was $14,522,925, or $1,778,799 higher than our own adjusted finding. This exhibit shows that during the period from 1886 to 1939, inclusive, Peoples earned an average of 8.92 per cent on the invested capital and that from 1925 to 1938, inclusive, Columbia earned 5.921 per cent. In computing the net earnings, all charges as shown by the books for operating labor and expense, maintenance, labor and expense, taxes, depreciation, depletion, amortization, interest, etc., were deducted from the gross revenues. Thus, the percentages of 8.92 per cent earned by Peoples, and 5.921 per cent earned by Columbia, are net of all charges, of whatever nature, which were made to operating expenses on the books, which reflected the results of the operating, depreciation, accounting, and other policies and practices of respondent's management at the time the charges were made. In the same periods, Peoples paid average cash dividends equal to 6.952 per cent of the invested capital, and Columbia paid average cash dividends equal to 5.07 per cent of invested capital.

E. Depreciation Reserve

[17] The depreciation reserve, which is the term we will apply to all reserves for future plant loss, is neither, on the one hand, a measure of the physical depreciation of the property nor, on the other hand, a "mere bookkeeping entry," although both claims have been made for it. To regard it or disregard it as such, as the case may be, is to deprive the utility and its consumers of that fairness which common sense dictates and the courts prescribe.

The reserve is primarily an accumulation, the purpose of which is to absorb losses incident to the retirement of property. Whether it meets that purpose, and the nature of the accumulation, depend upon the circumstances obtaining over the years of its creation. If, during those years, the utility's income statements show net losses equal to the amounts taken into the reserve, it certainly would not meet its purpose, and at the end of the property's life the owners of the business would not only have received no dividends, but they would have lost their original investment as well.

If, as a second alternative, the utility's income statements during the years showed neither profits nor losses, the reserve would meet its purpose, but the stockholders of the company would receive a return *of,* but not a return *on,* their investment. In such a case, the reserve represents annual payments of cash by consumers, but of amounts inadequate to take care of the further need for a return to the investor.

As a third alternative, the utility's income statements during the years might show profits sufficient to yield a reasonable return to the investor. In such case, a return *on* capital having been taken care of, the reserve represents the amount of cash paid by consumers toward a return *of* capital.

Under either of the last two circumstances, the reserve represents cash paid by consumers but this does not mean the utility has retained the cash as such. It may, and frequently does, reinvest that cash in more property,

with relation to which, of course, it earns a return and accumulates a further reserve. Respondent has followed this practice, which is one of the reasons why it owns property with an original cost of $47,732,478, while its invested capital is only $12,744,126.[2] A further reason for this situation will appear later.

The accumulation of respondent's reserve fulfils the conditions of the third alternative. Reference to the preceding section shows that the average annual earnings of Peoples over the fifty-five years of its life were 8.92 per cent of the invested capital, and that the stockholders received an average annual dividend of 6.925 per cent on their money. The difference, of course, was added to surplus, and is taken into account in our computation of invested capital for succeeding periods. In the case of Columbia, the average annual earnings were 5.921 per cent of invested capital, and the stockholders received an average of 5.07 per cent on their money, the same comment being applicable to the difference here as in the case of Peoples. Columbia was by far the smaller of the two companies, and its age is only slightly more than one-fourth that of Peoples, so that figures for respondent, resulting from the combination of Peoples and Columbia, would be much closer to the People's earnings and dividends than to Columbia's. Thus, it may accurately be said that respondent's reserve, amounting to $29,414,196, was contributed entirely in cash, by consumers, while they were also paying to the utility, likewise in cash, the earnings we have already mentioned.

[18] It should be noted that of the $29,414,196 in the reserve, $22,512,778 has been accumulated since 1922, when the respondent's predecessors first filed annual reports with this Commission. These reports are filed under oath, of which the following, taken from the People's reports for 1938, is representative:

"Commonwealth of Pennsylvania, } ss:
"County of Allegheny }

"We, the undersigned, *J. French Robinson, President,* and *S. J. Ratcliffe, Treasurer,* of the *Peoples Natural Gas Company,* on our oath do severally say that the foregoing return has been prepared, under our direction, from the original books, papers, and records of said company; that we have carefully examined the same and declare the same to be a complete and correct statement of the business and affairs of said company in respect to each and every matter and thing therein set forth to the best of our knowledge, information and belief; and we further say that no deductions were made before stating the gross earnings or receipt herein set forth except those shown in the foregoing accounts; and that the accounts and figures contained in the foregoing; return embrace all of the financial transactions of said company during the period for which said return is made.

(signed) *J. French Robinson*
President
(signed) *S. J. Ratcliffe*
Treasurer

"Subscribed and sworn to before me this 29th day of ... March ... 1939 (*signed*) *George P. Vogeley.*"

[2] The equities of such a situation are discussed in Railroad Commission v. Cumberland Teleph. & Teleg. Co. (1909) 212 US 414, 424, 425, 53 L ed 577, 29 S Ct 357.

Short of an audit of each utility under its jurisdiction in every year, which is manifestly so expensive as to be impossible, the Commission must rely upon the verity of these reports to direct its regulatory activities. We have, in the past, relied upon the reports of respondent's predecessors, who have said in substance: "This year we have collected, over and above our profit, so many dollars from consumers to compensate us for the loss we will incur when our property is retired; and we believe those dollars represent the proper amount to be so collected." To permit complete disavowal of such statements after the accumulation has been made is to encourage identical action by other utilities, and hence to render any adequate regulation of rates impossible. Consequently, we will give the reserve, and the manner of its accumulation, due consideration in our finding of fair value.

[19] Expensed property involves the same fundamental question—whether a utility may certify to a fact over a great many years, and then change its viewpoint, to the disadvantage of other parties.

The usual method of accounting for property—recording the facts with regard thereto—is to charge its cost to a fixed capital account and to accumulate a reserve against it. When it is physically retired, the cost is removed from the fixed capital account, a corresponding amount is taken from the reserve and, if a replacement is made, the new item of equipment goes through the same process. This treatment is accorded all major items of plant by every utility. But every utility likewise finds that as to certain small items of property, this process is too onerous and expensive to be practical. In a company of the size of respondent, for example, the cost of replacing a tee joint of pipe may be so small relatively that the cost of the old joint is allowed to remain untouched in fixed capital, while the cost of replacing it is charged to maintenance expense. Because the cost of the old joint and the cost of replacement joint may not be identical, differences will arise between the dollars reflected in fixed capital and the cost of the property actually in service.

Under our former system of accounts, and until a new system became effective on January 1, 1939, every natural gas utility was left to work out its own practice as to the accounting disposition of these relatively minor items between capital and maintenance. So long as either treatment, once applied to an item, was regarded as final, it neither harmed nor benefited the utility. If the item was charged to fixed capital, it would be depreciated over its life, the utility would recoup the cost by the time of retirement, and in the meantime it would be entitled to a return thereon. If it was charged to maintenance, the utility recouped the entire cost in the year of installation, and consequently the item did not represent an investment. Stated another way, through the fixed capital process the cost was recouped from the consumer in instalments over the life of the property; through the maintenance process the cost was entirely recouped from the consumer in the first year of life.

A parallel situation arises in the matter of overheads, one example of

which is administration during construction. While a property is being constructed, there is a presumption that the officers of the company are devoting a part of their time to supervision of the construction project. For practical reasons, officers do not keep a record segregating their time as between construction and operations, but instead the construction project has added to it an arbitrary percentage of itself, and a corresponding amount in dollars is deducted from salary expense for the year. As in the case of minor property items, the percentage is not important so long as it is accepted as final, for any dollars charged to construction are depreciated by charges to the consumer over the life of the constructed property, while dollars charged to operations are collected from the consumer in a single year. Either way, the utility gets reimbursed. Under such circumstances, the accounting process becomes much more than "mere bookkeeping." It becomes a manifestation of the choice by the utility of the manner in which it prefers to have the consumer pay for property or expenses rightly charged against him.

All of the foregoing discussion leads to this point: that respondent, in presenting its original cost of $47,732,478, included $7,558,226 of property and overheads, all of which were charged to operating expenses in the years in which they were incurred. That is to say, having chosen the manner of reimbursement by consumers, and having been reimbursed in full for those expenditures, respondent has included them for consideration as an element of rate base, to be paid for again by the consumers. Since we have found accrued depreciation to be 45 per cent, the $7,558,226 of expensed property and overheads is included in our depreciated original cost finding in the amount of $4,157,024. There is a greater but undetermined amount in respondent's reproduction cost estimate, applicable to the same "expensed" items.

These facts must be accorded appropriate consideration in our determination of fair value: Los Angeles Gas & E. Corp. v. California R. Commission, 58 F(2d) 256, PUR1932C 397; Peoples Gas Light & Coke Co. v. Slattery (1939) 373 Ill 31, 31 PUR (NS) 193, 25 NE(2d) 482 (appeal dismissed [1940] 309 US 634, 84 L ed 991, 60 S Ct 724).

F. Going Concern Value

[20] Respondent claims $3,000,000 for going concern value, and has attempted to support it by Volume 19 of Exhibit 11, consisting of 229 pages. Objection to admission of the volume was made by counsel for the Commission, who also moved that the testimony of witness Rhodes with reference to going concern value be stricken from the record. The objection and motion were based upon the contentions that the witness was not qualified to testify on going concern value; that the records of the company for its development period were incomplete, and thus afforded no reliable basis for going concern value conclusions; that the operating organization of respondent was paid by the consumers through operating expenses and should, therefore, not be capitalized as the witness claimed; that the consumers had themselves created any value inherent in the property in ad-

dition to junk value by agreeing to take service from respondent rather than securing service otherwise and should, therefore, not be required to pay a return on value so created; that the cost of attaching business had already been paid by the consumers, and that lag in earnings, to be considered, must be shown to result from causes other than inefficient management. The objection was overruled; the exhibit admitted for whatever value it might have; and the related testimony permitted to stand. However, the objections advanced against the going concern value evidence appear pertinent, and we will give them due weight in our consideration of this item.

The Pennsylvania superior court, in accord with other high authorities, has held that no special separate allowance need be made for going concern value. Solar Electric Co. v. Public Utility Commission (1939) 137 Pa Super Ct 325, 31 PUR(NS) 275, 9 A(2d) 447. Our examination of the present record discloses no reason for such separate allowance, but the mere presence in the record of a volume of 229 pages purportedly relating to going concern value requires some discussion of its worth. Many of the contents of the volume, like the tinted photograph entitled "Initial Flow of Pittsburgh's Biggest Well" and subtitled "Production like this is a thing of the past," have nothing to do with the subject. In fact, page 2 states that about 66 pages of the volume are "not intended to demonstrate the existence of going concern value in the property." At no point in the exhibit does respondent show that its claim of $3,000,000 is more than pure guesswork, and in some instances the evidence is self-contradictory. Thus, for instance, although the Altoona line extension is held forth as an example of lag in earnings, page 94 says:

"The cause of 'lag' in earnings from investment in the Altoona extension was due principally to the necessary initial overcapacity of the transmission line, and in part to the distribution system that had to be provided ahead of the demand. *Although it is understood that the demand for connections to the new system was so great that initial construction in the distribution system could hardly keep pace therewith,* the growth of total use was materially slowed, so that *a considerable 'lag' occurred between the time of the construction of the new distribution lines and the time when this portion of the system attained a reasonable average loading* and a net revenue available for return on the investment." (Italics ours.)

Whether lag was actually experienced by respondent is shown by Commission Exhibit 61, which is a study of earnings and dividends from the inception of the business in 1885 onward. This exhibit shows the following history for the first ten years:

	Earnings		Cash Dividends	
Year	Amount	% on Invested Capital	Amount	% on Invested Capital
1886	$12,827	4.1	$	...
1887	73,407	10.5	13,484	1.9
1888	76,991	9.9	111,892	14.4
1889	174,782	17.1	115,092	11.3
1890	245,226	21.6	116,886	10.3

Year	Earnings Amount	Earnings % on Invested Capital	Cash Dividends Amount	Cash Dividends % on Invested Capital
1891	278,068	21.1	38,962	3.0
1892	124,437D	...	77,924	5.8
1893	148,756	11.7	77,924	6.1
1894	31,206D	...	126,657	10.3
1895	165,143	13.8	77,924	6.5

D—Deficits

Following the first year, there was an unbroken dividend record for a period of seventeen years to 1903. From 1903 to 1907 no dividends were paid, although the earnings available therefor aggregated $3,327,762, or more than 18 per cent on the invested capital.

We cannot, therefore, give much credence to respondent's argument that its claim for going concern value is supported by lag in earnings.

As already indicated, respondent submitted a great deal of material on the subject, much of it not germane, still more of it highly speculative, and none of it predicated upon direct computation leading to the $3,000,000 claim. In any event, as stated, the Pennsylvania superior court has ruled that a separate allowance need not be made for going concern value, and we will follow that rule.

G. Working Capital

[21, 22] Respondent claims an allowance of $1,760,000 for working capital, consisting of the following alleged requirements for the years ended December 31, 1937, and 1938, as shown by Exhibit 36:

Minimum bank balance required to avoid service charges	$247,000	$247,000
Petty cash funds	4,500	4,580
Deposits covering street openings and road crossings	6,788	6,598
U. S. Securities trusteed for Pennsylvania Workmen's Compensation Board	18,869	18,869
Materials and supplies—yearly average	632,842	646,488
Abandoned compressing stations priced as materials and supplies, on basis of reproduction cost new less depreciation as of June 30, 1937	46,440	46,440
12½% of total annual expense required for working capital	810,987	785,218
	$1,767,426	$1,755,193

Respondent's claim of $1,760,000 is an approximate average of the above alleged requirements for 1937 and 1938.

Instead of basing our total allowance on findings for each of the foregoing items, we will conform to our usual practice of making a determination of reasonable cash working capital to which will be added a proper allowance for materials and supplies. We will take into account respondent's actual cash working capital requirements as indicated by the annual operating expenses and by giving consideration to respondent's practices in receiving revenues for services and in making payments to vendors for operating costs. However, before determining a proper allowance for total working capital on this basis, we deem it advisable to make two observations regarding certain items included in respondent's claim; the first relating to minimum bank balances claimed,

and the second relating to the claim for an abandoned compressing station.

Respondent attempted to justify its claim for $247,000 as the minimum amount of bank deposits required to avoid service charges by the testimony of its treasurer, S. J. Ratcliffe. In some instances, witness Ratcliffe supported his testimony with contracts and correspondence between respondent and particular banks. For the most part, however, he based his minimum bank balance figure on what he termed "an understanding" with the bank. All of this testimony, excepting the instances where contracts were produced, is hearsay and vague. No attempt was made to show that it would not be more economical to pay a service charge (there is no evidence what the charge would be) than to place the necessary cash with each bank.

Respondent has included an abandoned compressing station as a separate item "priced as materials and supplies." The value of this property is estimated at its reproduction cost new, less depreciation, as of June 30, 1937, and aggregates $46,440. Witness Ratcliffe was unable to give a full explanation of why this item appears as part of respondent's materials and supplies. An abandoned compressing station would plainly seem to be part of respondent's nonused fixed capital. Conceivably, parts of a compressing station might properly be considered materials and supplies but, as stated, no attempt was made by respondent to furnish details concerning this questionable item; nor was any figure submitted as to the book cost or original cost of the property.

In fixing rates for the future for a new public utility enterprise, it would be necessary to maintain a cash balance consisting of bank accounts and working funds, together with a stock of materials and supplies. In a new enterprise, revenues would not be collected from the first day of operation, but of necessity would be deferred until sometime after the first billing date. In respondent's case meters are read monthly; bills are rendered several days after meter readings, and a period of approximately ten days is allowed for consumers to pay without incurring a penalty. Thus a period of not longer than one and one-half months usually elapses between the beginning of service and payment therefor. In this period respondent would require cash to pay its own labor costs and such other expenses as it would be necessary to pay before it would have the benefit of revenue collections. As against the necessity of having current funds available for these purposes, respondent would not need any substantial sums for the current payment of its own purchased gas costs which in 1939 amounted to $2,913,299. Gas is purchased from Hope Natural Gas Company and various other producers and payments therefor are made ten or fifteen days following monthly readings of the meters. It is clear, therefore, that substantial revenue collections from respondent's retail consumers would be available for payment of the wholesale gas bills. This factor will be given appropriate consideration in our determination of the cash working capital allowance.

Our allowance for cash working capital will be based on respondent's expenses in the year 1939, exclusive of the items of taxes, which are paid in arrears; depreciation, which requires

no cash outlay; and gas purchased costs which are paid in arrears. Of course, many other items of operating cost are paid for in arrears of service received and for materials purchased, but it is evident that the two most important items are taxes and gas purchased. This would be true of any enterprise with a reasonably good credit rating. Consequently, respondent, like any other enterprise, would need only such working capital funds as would be necessary to make required operating expenditures until such time as revenue collections would allow reimbursement of the then depleted working capital funds. Respondent's total recorded out-of-pocket operating expenses amounted to $6,668,509 in 1939, including $2,913,299 for gas purchased. Thus not more than $3,755,210 or $312,934 monthly would be required prior to revenue collections. Since these collections would probably not be received until forty-five days from the beginning of service, the cash requirement in the meantime would approximate $469,401. In our opinion, a cash working capital allowance of $475,000 for respondent would be ample.

On December 31, 1939, respondent's materials and supplies inventory amounted to $689,596, as compared with a similar item on December 31, 1938, amounting to $662,671. In our opinion, an allowance of $690,000 would be reasonable for this time.

Based on the foregoing findings, we will allow $1,165,000 for total working capital, consisting of $475,000 for cash and $690,000 for materials and supplies.

H. The Fair Value

Following the principles laid down in Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, we now come to a weighing of the evidence, both quantitative and qualitative and to a finding of fair value.

We have found that, so nearly as can be determined from the record before us, the cost to reproduce respondent's property at December 31, 1938, prices, less accrued depreciation, would be $39,730,207. As has been already related, the weight of this factor is modified by the substitutions and conjectures which the reproduction costing process involves; by the multiplicity of choices open to the estimator; and by the fact that if the property were really to be reproduced, respondent would utilize the most modern equipment and labor-saving methods, the advantages of which would be reflected not only in first cost, but in the expenses of operation as well. A further modifier of this element is the inclusion within it of an amount, undetermined but certainly in excess of $4,000,000, representing property and overheads which have been already charged off against the consumer in operating expenses.

We have found that respondent, in addition to having collected full reimbursement for $7,558,226 of property now in existence, and in addition to having secured an average annual return on its investment of something between 7 per cent and 9 per cent, but nearer the latter, has also collected as a reserve for depreciation the sum of $29,414,196 in actual cash payments from the public to whom it has rendered service. As a result of these

factors, the book value of its property at December 31, 1938, was $9,869,793.

[23, 24] We have found that the original cost, less accrued depreciation, of all of respondent's property at December 31, 1938, was $26,252,863. We know that of this amount, $4,157,024 represents property and overheads which, until the occurrence of this rate case, respondent regarded and treated as operating expense. Here we may adopt one of two courses, either of which works substantial justice for respondent. First, we may accept respondent's contention that the $7,558,226 of materials, labor, and overheads heretofore charged to expense are part of original cost and, consistently therewith, exclude from claimed allowable operating expense all similar items to be incurred in the future, on the ground that they too are not expenses, but accretions to capital. Such a course, while theoretically consistent, is administratively impracticable, for respondent would then be under the tremendous burden of providing capital accounting for even the most minute article or labor element, the use of which might run for longer than a year. We prefer the second alternative and, in harmony with the past and present practice of the gas industry in general and respondent in particular, we will allow in respondent's operating expenses the innumerable minor items which, if carried through capital, would create an impossible accounting burden. At the same time, consistent with that policy, items of this nature so treated in past years cannot now metamorphose into capital. Hence, we find original cost less accrued depreciation for rate purposes to be $22,095,839.

[25] Another figure, $12,744,126, is the number of dollars which the owners of the respondent have invested in it, either directly or by allowing surplus to accumulate. Although we will not consider invested capital as being a direct factor in fair value determination, it does perform a very important function by showing us at what point a fair value finding would work a hardship upon respondent's owners. For example, if we should fix a rate of return which, as a matter of objective fact, is fair and right, but apply that rate of return to a rate base which is lower than the sum invested by the owners, the inevitable result for them is something less than a fair return upon their investment. Conversely, a rate base equal to or more than the investment works no such hardship. In other words, invested capital may serve as an important index of the *minimum* fair value.

After having considered each of the elements specifically mentioned in this section of our order, and having weighed carefully all other facts of record which might be considered relevant thereto, we find and determine that the fair value rate base of respondent as a going concern, exclusive of working capital, is $20,000,000, as of the date of this order.

To this must be added an allowance for working capital, which we have already determined should be $1,165,000. Consequently, we find that the fair value rate base of respondent, including all factors is $21,165,000, as of the date of this order.

II. Rate of Return

Respondent's evidence on this subject was presented by witness Bollard, a member of the investment banking firm of Dillon, Read, and Company. He testified that after a study of respondent's business in particular and the natural gas industry in general, he concluded that one company, National Fuel Gas Company, was quite similar to respondent, and four others were sufficiently like it to warrant comparison.

Having assumed that respondent could be capitalized by a 40 per cent bond issue and 60 per cent in common stock, Bollard concluded that stockholders should be assured an 8 per cent return and that to make it doubly sure, the return to them should be 10 per cent. On the basis of his premise as to capitalization, he determined that the minimum over-all return should be 7.8 per cent.

Bollard arrived at his conclusion largely on the basis of the relationship between the dividends paid on National Fuel Gas Company stock during 1938 and the average market price of that stock during the first eight months of 1939. Aside from the peculiarity that these periods do not coincide, it is apparent that dividends-to-market-price is not synonymous with rate-of-return-on-fair-value; that the earnings of National Fuel Gas Company may be affected by many factors not present here, such as degree of risk, and the presence or absence of regulation and monopoly; and that the principles to be followed in finding rate of return are broader than is comprehended by his evidence.

Bollard testified that his 7.8 per cent rate was based in part upon the fact that there had been a decrease of consumption of natural gas in the Appalachian district from 1925 to 1936 "and that the main reason for this trend is the severe competition from coal as fuel." He said he reached this conclusion from a paper prepared in 1937 by Dr. John W. Finch, Director of the United States Bureau of Mines. However, what Dr. Finch said in his paper was something quite the reverse of Bollard's testimony. It was this:

"Competition with coal is of a long-established character. Consumption (of natural gas) in New York has increased rapidly in the last few years, and considerable concern has been shown by the *coal interests* over the gas lines built eastward toward the seaboard city markets." (Italics ours.)

Part of Bollard's reasons for his conclusion are based upon respondent's income and expense figures. As will be shown later, the figures supplied him by respondent were later admitted to be incorrect and were changed in the record of this case. We will discuss these changes in a later part of this order.

The rules of law by which we are guided in determining a proper rate of return for respondent have been often stated by the courts. Probably the most recent expression of opinion on the subject by the United States Supreme Court is that contained in Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 119, 83 L ed 1134, 28 PUR(NS) 65, 74, 59 S Ct 715, where the court said:

"(2) The rate of return was fixed by the Commission at 6 per cent.

Witnesses for the utility brought out facts deemed applicable in the determination of a proper rate of return on the fair value of the property. Their evidence took cognizance of the yield of bonds, preferred and common stocks of selected comparable utilities, the stagnant market for new issues, prevailing cost of money, the implications of the possible substitution of some governmentally operated or financed utilities for those privately owned and the dangers of a fixed schedule of rates in the face of possible inflation. From these factors they deduced that a proper rate of return would be from 7.8 per cent to 8 per cent. An accounting expert of the Commission countered with tables showing yields of bonds of utilities; the yield to maturity of Pennsylvania public utility securities, approved by the Commission between July 1, 1933, and May 7, 1937, long term and actually sold for cash to nonaffiliated interests; yield of Pennsylvania electric utilities; financial and operating statistics of Pennsylvania electric utilities; money rates and other material information. He concluded 5.5 per cent was a reasonable rate of return.

"It must be recognized that each utility presents an individual problem. The answer does not lie alone in average yields of seemingly comparable securities or even in deductions drawn from recent sales of issues authorized by this same Commission. Yields of preferred and common stocks are to be considered, as well as those of the funded debt. When bonds and preferred stocks of well-seasoned companies can be floated at low rates, the allowance of an over-all rate return of a modest percentage will bring handsome yields to the common stock. Certainly the yields of the equity issues must be larger than that of the underlying securities. In this instance, the utility operates in a stable community, accustomed to the use of electricity and close to the capital markets, with funds readily available for secure investment. Long operation and adequate records make forecasts of net operating revenues fairly certain. Under such circumstances a 6 per cent return after all allowable charges cannot be confiscatory."

The principles generally applicable had been earlier summarized in Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 692, 67 L ed 1176, PUR 1923D 11, 20, 43 S Ct 675, where the court said:

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and eco-

nomical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally."

The above views have been adopted on numerous occasions by the superior court of this commonwealth, e.g., in Pennsylvania Power & Light Co. v. Public Service Commission (1937) 128 Pa Super Ct 195, 19 PUR(NS) 433, 193 Atl 427.

The Edison Light and Power Company Case, *supra,* was not made available to Bollard by respondent's counsel, which fact probably accounts for the lack of any specific treatment of the general money and securities market in his testimony. Another recent case on the subject was Arkansas-Louisiana Gas Co. v. Texarkana (1936) 17 F Supp 447, 17 PUR (NS) 241; (1938) 96 F(2d) 179, 24 PUR(NS) 267 (certiorari denied, 305 US 606, 83 L ed 385, 59 S Ct 66). That case is interesting in that it discusses and considers the hazards inherent in the natural gas business, together with the effect of the continued decrease in money rates and security yields generally. The court concluded that 6 per cent was a proper and nonconfiscatory rate of return.

A recent opinion dealing with the subject of rate of return is that of the supreme court of Illinois in Peoples Gas Light & Coke Co. v. Slattery (1939) 373 Ill 31, 31 PUR(NS) 193, 218, 25 NE(2d) 482 (appeal dismissed [1940] 309 US 634, 84 L ed 991, 60 S Ct 724). This decision is of considerable interest, since Bollard considered the Peoples Gas Light & Coke Company as one of the four companies in the United States sufficiently like respondent to warrant comparison. The Illinois Commerce Commission had directed the Peoples Gas Light & Coke Company to place in effect a schedule which the company contended would allow it only 5 per cent on the fair value of its property. In an equity action, alleging that such a rate was confiscatory and unconstitutional, the bill was dismissed and the rate upheld. The following extract from the court's opinion is important, we believe, since again it illustrates the emphasis placed on recent security market conditions:

"It seems to us fair to assume that if the company could take a sum equivalent to the value of its property and invest it soundly, so as to insure a rate of return in excess of the return authorized by the Commission, this would be proof, or at least evidence, of confiscation, yet we are bound to take judicial notice of the fact, as well as evidence in the record, that it would be exceedingly difficult to invest a sum anywhere comparable to the value of appellee's property so as to earn 5 per cent. It appears that in 1936 the yield of the highest grade public utility bonds was between 3 per cent and 3½ per cent, and that between 1934 and 1936, first-class public utilities were enabled to borrow upon their bonds money at from 3¼ per cent to 4¼ per cent, and that the average yield on the best bonds of railroads and industries, during 1936 and 1937, ranged from 3¼ per cent to 4½ per cent. It was also shown that

state bonds and high-grade city bonds were sold to yield anywhere from 1¼ per cent to 2½ per cent. It also appears in the record that the company borrowed several million dollars for refunding purposes at 4 per cent. The fair rate of return is to be tested primarily by present-day conditions (United R. & Electric Co. v. West, 280 US 234, 74 L ed 390, PUR 1930A 225, 50 S Ct 123). It seems reasonably clear that in view of present economic conditions, of which we take judicial notice (Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 77 L ed 1180, PUR 1933C 229, 53 S Ct 637) that the company would have great difficulty in realizing 5 per cent upon the money it has invested in its utility enterprise, in securities which would be as sound and as certain to return a like percentage. In this view it cannot be said that the company has suffered any loss of property that is confiscation."

It will be noted that the court distinguished between the limits of a confiscatory rate and an unjust or unreasonable rate. On the latter, the court had this to say:

"On the other hand, in ascertaining a just and reasonable return upon the investment there are other elements taken into consideration which include not only the earnings of other comparable companies, but also earnings that will enable the company at all times to be reasonably certain to become the purchaser of its stocks and bonds, so as to readily procure money for refunding or extension purposes. (United R. & Electric Co. v. West, *supra.*) These elements are taken into consideration in fixing a just and fair return and doubtless the earnings of the company which the Commission estimated at 6 per cent, took into consideration such factors."

Witness McShea, who was the accounting expert of the Commission referred to in the Edison Light and Power Company Decision of the United States Supereme Court quoted above, presented evidence as to rate of return in this case. This evidence, which is in the form of an exhibit (No. 44) and oral testimony, includes data relating to many of the factors stated by the courts as relevant in determining rate of return. These data consist of studies of bond yields, including industrial, railroad, public utility, and United States government issues covering a period of years; yields to maturity of securities amounting to more than $100,000, approved or registered by the Commission from July 1, 1933, to December 15, 1939; interest rates on 4–6-month commercial paper and 60–90-day time loans from 1920 to 1939; average prices of new capital for industrial, railroad, and public utility corporations from 1921 to 1938; rediscount rates of the Federal Reserve Banks in New York, Philadelphia and Cleveland (Pittsburgh branch) from 1920 to 1939; interest rates paid by leading state banks of Pittsburgh from 1930 to 1939; reserve requirements, reserves, and excess reserves of member banks of the Federal Reserve System and an interpretation thereof by the board of governors of the Federal Reserve System; ratios of earnings of public utility, railroad, and unregulated corporations to market prices of common stocks for a period of years; and ratios of earnings

and dividends per share to the average market prices of common stocks of seven natural gas companies covering generally a 5-year period from 1934 to 1938.

McShea did not express any opinion as to a proper rate of return for respondent. His testimony was similar (except that it included much more detail) to that presented by him in the Edison Light & Power Company Case. McShea readily conceded that his study was not confined to the securities of natural gas companies or even of public utilities, although a number of companies producing and distributing natural gas were actually included. Obviously, his purpose was to give a general picture of the securities and money market, in contrast and supplementary to Bollard's closely circumscribed investigation.

[26] In view of the fact, conceded by Bollard, that companies in all industries compete with each other for the investor's dollar, we must give consideration to the fact that interest rates in general have trended steadily downward. It is only necessary to glance at the charts and other data contained in Exhibit 44 to confirm what may be said to be common knowledge; that interest rates in 1939 were at the lowest level experienced in a period of several decades. Moreover, considering the rapid increases in excess bank reserves, and the interpretations placed thereon by the board of governors of the Federal Reserve System, it is likely that low interest rates will continue for an indefinite period. The superior court of this commonwealth has reminded us in three recent cases that interest rates, particularly on prime securities, have been so low, and the trend is so steadily downward, that only a very low rate of interest can be earned. This was pointed out in Cheltenham & A. Sewerage Co. v. Public Service Commission (1936) 122 Pa Super Ct 252, 274, 15 PUR(NS) 99, 186 Atl 149; Ambridge v. Public Utility Commission (1939) 137 Pa Super Ct 50, 60, 31 PUR(NS) 50, 8 A(2d) 429; and Solar Electric Co. v. Public Utility Commission (1939) 137 Pa Super Ct 325, 31 PUR(NS) 275, 9 A(2d) 447.

[27] Generally, private business enterprises may be divided into those engaged in competitive and unregulated activities, unlimited as to the extent of either their profits or losses, except by competition and other economic forces, and those regulated by public utility or similar commissions. In our opinion, the determination of a fair rate of return for respondent should include a consideration of the rates of return currently earned by competitive and unregulated business enterprises. Other factors to be considered are: present-day economic conditions, the financial history of respondent, the nature of the natural gas industry, the territory served by respondent, and all other matters likely to affect the success of respondent's operations. It may be said generally, at this time, that present-day local and general economic conditions are favorable, recent business indices showing, particularly in the Pittsburgh area, that business activity was greater in 1939 than for many years. Respondent has enjoyed considerable prosperity during its fifty-five years of existence, and has paid substantial

returns on the capital invested in the business.

While "competitive" industry may yield large profits at a particular moment, the instability of its earnings, as compared with regulated industry, is striking. This appears from Exhibit 44, page 46, which shows the returns earned on invested capital and on property and investments by 400 industrial corporations, 21 utilities and 42 railroads, for a 12-year period from 1927 to 1938, inclusive, as follows:

	Per Cent Earned on Invested Capital			Per Cent Earned on Property and Investments		
	400 Industrials	21 Utilities	42 Railroads	400 Industrials	21 Utilities	42 Railroads
1927	8.7	6.7	5.8	13.8	7.0	5.8
1928	10.7	7.0	6.0	17.1	7.2	6.1
1929	11.3	7.2	6.4	18.0	7.3	6.5
1930	6.6	6.8	4.9	10.2	6.9	4.9
1931	2.9	6.3	3.3	4.3	6.4	3.3
1932	0.9	5.6	2.3	1.3	5.7	2.3
1933	3.1	5.3	2.8	4.5	5.4	2.8
1934	4.5	5.1	2.8	6.7	5.3	2.7
1935	6.4	5.3	3.0	9.7	5.6	2.9
1936	9.0	5.5	3.6	13.8	5.8	3.5
1937	9.7	5.5	3.2	14.6	5.7	3.1
1938	5.1	5.1	2.3	8.0	5.6	2.2

The tabulation clearly shows the relative security of earnings of public utilities, in good times and bad, as compared with the instability of earnings of the 400 industrial corporations. In 1929 the latter earned 11.3 per cent on invested capital, whereas in 1932 they earned only 0.9 per cent.

Whatever change occurred in the return on what might be termed the equity interest in utilities was downward. The trend of yields on the prime obligations of utilities as well as nonutilities is more striking. The composite average of bond yields from 1920 to 1939 for 120 typical domestic corporations ranged from 7.08 per cent in 1920 to 3.70 per cent in November, 1939. Perhaps the most striking evidence of the decline in interest rates is the table of securities registered or approved by this Commission, or its predecessor, between July 1, 1933, and December 15, 1939. Considering issues of $100,000 or more, for a term of at least ten years, and bearing a fixed rate of return, the range is from 6 per cent in 1933 to materially less than 4 per cent at various times in 1938 and 1939.

[28] Our conclusion, after examining all the evidence in the record, and after careful consideration of respondent's contentions, is that a rate of 6½ per cent on the fair value of respondent's property is just and reasonable, and we so find. (See Natural Gas Pipeline Co. v. Federal Power Commission [1941] 120 F(2d) 625, 38 PUR(NS) 257, approving a 6½ per cent rate for a pipe-line company; also Dayton Power & Light Co. v. Ohio Pub. Utilities Commission [1934] 292 US 290, 311, 78 L ed 1267, 3 PUR(NS) 279, 54 S Ct 647.)

[29] In arriving at the rate of 6½ per cent we have not considered our allowances for income tax as reducing the rate, although such reduction would be proper under the rule stated in Galveston Electric Co. v. Gal-

veston, 258 US 388, 399, 66 L ed 678, PUR1922D 159, 42 S Ct 351 and Georgia R. & Power Co. v. Railroad Commission, 262 US 625, 67 L ed 1144, PUR1923D 1, 43 S Ct 680, and adopted by the Pennsylvania Superior Court in York v. Public Service Commission (1925) 85 Pa Super Ct 139, 141.

The rate of 6½ per cent on our fair value of $21,165,000 produces $1,375,725. Since there are no claims on this amount except those of the owners, it represents a return to them of approximately 10.8 per cent on their investment of $12,744,126. Such a return appears to be not merely compensatory to the present owners but more than adequate to attract new capital, should the affairs of respondent require it.

III. Revenues and Expenses

Before discussing operating results, brief comment is required as to respondent's accounting procedure. Respondent's accounts have been kept in accordance with the general accounting procedure imposed by the Standard Oil Company (New Jersey), presumably for the purpose of coördinating the accounting methods of all system properties for financial report purposes. This has resulted in respondent's accounting system being to some extent at variance with the uniform classification of accounts prescribed by the Commission, and placing respondent in the position of having failed to comply fully with the Commission's accounting requirements regarding classification of accounts. The result has been confusion, plus the necessity of "translating" numerous accounts as kept by respondent into terms of the Commission's prescribed accounting classification. In fact, our accountants, in field analysis of the operating expenses, found it necessary to use a chart constructed by respondent for the purpose of relating the accounts of the two accounting systems. Reference to the difficulties involved is made in the testimony of respondent's treasurer at page 664.

The record is replete with revenue and expense evidence, both estimated and actual. Much of it was superseded by later exhibits whereby respondent corrected errors or revised its former estimates, thereby nullifying the earlier evidence on the same subject.

A case in point may be cited. It has been stated before that Peoples and Columbia were in effect operated as a single concern and this was also true as to certain other affiliates. The modus operandi was that Peoples performed various managerial functions for Columbia, for example, charging the cost thereof initially to its own operating expense accounts. Periodically, it would bill Columbia for this cost and the payment thus received was credited to Peoples operating expense accounts so that, following deduction for the Columbia credit, these accounts reflected the proper cost to Peopes of performing similar services for itself. However, in 1937, after the institution of our rate investigation, the accounting process was changed. Payments received from Columbia were no longer deducted from the operating expenses of Peoples, and consequently these expenses were overstated—that is, they reflected not only the cost of operating Peo-

ples, but the cost of operating Columbia as well. Exhibit 21 contained expenses set up on this basis for the three years from 1937 to 1939, adjusted to reflect the same rates per respondent's Exhibit 57:

	1937	1938	1939
Operating Revenue:			
Domestic, Commercial, and Misc.	$7,040,875	$6,813,700	$6,821,048
Industrial	3,958,687	2,213,580	3,170,206
Affiliated Utilities	.....	.....	39,472
Nonaffiliated Utilities	403,979	471,872	423,759
Other Revenue	776,793	680,026	792,505
Total Revenue	$12,180,334	$10,179,178	$11,246,990
Operating Expenses:			
Production	$670,536	$754,557	$538,329
Exploration and Development	373,441	487,216	416,681
Gas Purchased	3,878,570	3,001,030	3,236,545
Transmission	544,493	463,542	619,725
Distribution Expense	767,444	745,567	648,100
Customer's Accounting	465,561	473,066	411,001
Sales Promotion	36,543	59,931	138,118
Admin. and General	987,489	973,155	897,685
Amortization of Rate Case	169,807	169,807	169,807
Amortization of Cont. Property Record Expenses	24,000	24,000	24,000
Taxes	731,655	404,391	604,143
Depletion of Wells	321,435	306,740	533,988
Depletion of Operated Leases	8,159	7,716	14,605
Depreciation of Other Property	891,984	891,984	891,984
Other Expenses	465,689	386,557	472,809
Total Operating Expenses	$10,336,806	$9,149,259	$9,617,520
Operating Income	$1,843,528	$1,029,919	$1,629,470

years 1937 and 1938. When the inaccuracy was discovered through cross-examination, a revised exhibit (32) was offered by respondent to supersede Exhibit 21, showing a reduction of expenses, by reason of proper credits for affiliated company payments, of $264,839 and $320,394 for 1937 and 1938, respectively. Consequently, we may disregard the uncorrected data of Exhibit 21.

Much of respondent's testimony was directed at estimating the operating revenues and expenses of a "normal future year." In effect, respondent's evidence predicts that, based upon the increased rates provided for in Tariff No. 19, its annual operating income or profit will be $797,302. The value of this evidence may be gathered by a comparison of it with the actual experience of the

Respondent's Exhibit 57A further adjusted this operating income by providing for increased taxes. As adjusted, the operating income for the three years would have been:

1937	$1,783,655.00
1938	1,006,045.00
1939	1,584,394.00
Average	1,458,030.00

It is apparent from these figures that if respondent's estimate of the "normal future year" bears any relationship to reality, it can do so only by reaching into the far future, further than anyone can reasonably predict, and certainly further than the several years for which whatever rates we prescribe may be expected to remain effective.

The year 1939 was what we now know to be the beginning of a very definite upward swing of the business

cycle, and with respondent serving one of the principal manufacturing districts of the nation, it may be said confidently that for the reasonably predictable future respondent's operating results are extremely likely to improve well beyond the 1939 figures. We will therefore use those figures in our further discussions.

The first adjustment to the 1939 figures is occasioned by the fact that in December, 1939, respondent signed a contract with its affiliate, New York Natural Gas Corporation, whereby the latter leases a gas line from respondent at an annual rental of $120,000 and purchases respondent's gas transmitted through the line. Respondent's Exhibit 59A shows that in 1940, the first full year of operation of the contract, the revenues realized therefrom by respondent were $120,000 for rental and $1,071,620 for gas sales. Consequently, we will adjust the 1939 revenues and expenses by eliminating the initial partial month's operating results under this contract in December, 1939, but add to them the known rental and gas sales for a year, with the corresponding expense, per Exhibit 59A.

[30] The 1939 expenses shown in our table include $7,185 of dues paid to the Natural Gas Men's Association. Although respondent's treasurer is also auditor of the association, he was unable to say what services, if any, respondent received for these payments. In the absence of such information, we must exclude the charge from operating expenses.

[31] Respondent shows in its Exhibit 57 that its rate case expense was $849,034, which it proposed to amortize over the five years, 1937 to 1941, inclusive. Since the amortization period has expired and the rate case cost has been fully recouped, there is no reason to provide for further amortization in future rates. The 1939 expenses, which we are using as a basis of discussion in prescribing future rates, should be reduced by the amount of $169,806 representing that year's proportion of the rate case costs.

[32] Pursuant to our regulations, respondent, like other large gas companies, is engaged in establishing continuing records of property, which it estimates will cost $120,000. It proposes to amortize this cost in five years, but since the records are of permanent value, a 10-year period appears to be more reasonable. The annual charge therefor should be reduced from $24,000 to $12,000.

[33] Federal income tax rates have increased under the Revenue Act of 1941, and we take cognizance thereof in this case. Having recomputed the tax upon the basis of respondent's actual tax experience for 1939, our allowable operating income of $1,375,725, and the increased tax rates, we will allow $83,000 additional tax expense to respondent for 1941 and later years.

The matter of annual depreciation requires more discussion than any other subject covered by this part of our order. What has been said as to the difficulties inherent in finding accrued depreciation as an element of rate base applies with equal force to its counterpart, annual depreciation, among the operating expenses. And, as in the case of rate base, the general trend of decisions has been, not to specify the process by which annual depreciation may be computed, but rather to suggest that each case shall

be considered on its merits, and that the conclusion shall be such as to work substantial justice for the parties.

Respondent's witness Rhodes testified that he would consider as reasonable the following annual percentages of depreciation (exclusive of gas wells and leases) as applied to reproduction cost:

Class of Property	%
Production system	2.0
Transmission system	1.3
Distribution system	2.0
Pittsburgh office building	1.5
Other general property	3.0

It is to be noted here that Rhodes' percentage estimates for accrued and annual depreciation lack consistency. To deal with a specific instance, Rhodes found that at the end of 22.38 years of composite age, the Pittsburgh office building had depreciated only 26.5 per cent, an average of but 1.19 per cent per year. Such evidence, of course, tends to establish a low accrued depreciation, and a correspondingly high rate base. On the other hand, in dealing with the annual depreciation, which is a charge to be collected in the future, Rhodes concluded that 1.5 per cent was the reasonable rate. The difference between these percentages becomes more apparent when they are translated in terms of lives. Thus, on a straight-line basis, 1.19 per cent produces a life of 84 years, while a 1.5 per cent annual rate signifies a life of only 66.6 years. Similar inconsistencies, in some instances of much greater degree, appear in his evidence as to nearly every property account.

Rhodes is not the only witness, nor is respondent the only utility, to present evidence of this sort. The testimony here parallels almost every other rate case presented before us, and displays either a misunderstanding of the depreciation problem or a belief that the subject provides a loophole of escape from rate regulation.

[**34**] The sole purpose of any business enterprise in providing for depreciation is to accumulate out of current revenues a reserved surplus, unavailable for dividends, into which the eventual loss incident to retirement of property may be absorbed. It is not intended to pay for a future replacement which may cost more than the property replaced, for under our law, and rightly so, the difference in such cost is available for capitalization, to be provided by investors rather than consumers. Neither is it intended to provide a hidden profit—hidden, that is, until the property is retired—for no ordinary business could meet its competitors' prices if it did so, and in the case of utilities any such profits would render pointless the duty laid upon us to fix a fair rate of return.

Just how the reserved surplus (usually called the depreciation reserve) is accumulated is not important, so long as the process is consistent in itself. For instance, if a utility should choose to examine its property annually, and charge annual depreciation with the difference between the observed conditions from year to year, it would be consistent in claiming an accrued depreciation deduction from the plant elements of the rate base equal to the latest observed depreciation. As a second approach, it might estimate the life of its property, and charge annual depreciation in equal instalments over that life. If it did so, consistency would be met if it claimed as deduction for accrued depreciation the elapsed years of life

multiplied by the annual instalments. But to testify that the *observed accrued* depreciation is 27.55 per cent, as Rhodes did, and then to express the opinion that for next year and for future years the *equal annual* instalment should be 1.5 per cent or 2 per cent, or any other figure (again, as Rhodes did), is no less illogical than for a complainant to urge the opposite mixture—that the deduction for accrued depreciation should be based upon the age and estimated life of the property, but that the future allowance should be only that depreciation which could be observed from year to year. Either position is indefensible. Since Rhodes' evidence as to percentage depreciation is contradictory in itself, and since none of the other evidence supports either of his two positions, we must reject his testimony as to depreciation and look elsewhere for facts upon which to base a conclusion.

[35] As we indicated in our discussion of accrued depreciation, the more desirable of the two types of treatment is that of age-life, where the estimated life is predicated upon an actual examination of the specific property to which the treatment is applied. In addition to the fact that such treatment gives effect to potential as well as realized depreciation, it is also far less expensive to administer, for it does not necessitate an observation of the property in every year. Moreover, while the age-life method contemplates reimbursement in full to the utility for retired property, the observation method usually results in a sizable observed "per cent condition" for the property shortly before retirement, and that per cent represents exactly the loss which the utility must sustain from its own pocket.

When we pass from the abstract to the real, we find that respondent and its predecessors, in their ordinary day-to-day business practices, followed the equal annual instalment method in fixing annual depreciation. In the first annual report ever filed with us by Peoples, for the year 1922, there appears the following statement:

"The basis of the charge to operating expense on account of depreciation is founded on an estimated useful life of the various classes of property as follows:

	years
Production and Transmission System	20
Distribution System	33⅓
General Property such as Drilling Tools, Office Furniture, Telegraph and Telephone System	20
Teaming Equipment	10
Automobiles and Trucks	4
Pittsburgh Office Building	50
Other Structures	20

"Depreciation is computed on monthly balances at the rate of 1/12 of the following percentages per month:—

Production and Transmission System Properties (Excluding Leaseholds and Gas Well Construction)	5%
Distribution System Property (Excluding Franchises, Ordinances, and Land)	3%
Drilling Tools, Office Furniture, Telegraph and Telephone System	5%
Teaming Equipment	10%
Automobiles and Trucks	25%"

From then onward, through 1939 (after the rate case had begun and Rhodes had presented his testimony), the annual reports have contained practically identical statements.

It is not to be supposed that respondent and its predecessors, in following this rule, were unfamiliar with its elements, and that the first full understanding of them was brought by witness Rhodes. Respondent is merely the latest of a series of companies

which, corporate fictions aside, have been but a single entity; the engineering department staff, like other employee groups, has been carried over from each company to its successor, and in addition, respondent has had available to it the engineering resources of its parent, Standard; the depreciation experience of respondent and its progenitors goes back to 1886, a period of fifty-five years; from all of which it is proper to infer that respondent's own processes are probably better adapted to its depreciation problems than are those of witness Rhodes.

As shown in Part I-D of this order, respondent had on its books at December 31, 1938, the sum of $39,283,989, representing the cost of all physical property other than that which had been "expensed" and charged to customers in the year of installation. This figure, however, included $418,017 of work in progress, representing plant not yet in use and hence not yet depreciating. The difference, $38,865,972, is the book cost of plant actually in service. Moreover, the latter sum includes $2,822,777 of land and other items which do not depreciate, so that the book cost of depreciable plant in service at December 31, 1938, was $36,043,195.

As was shown in Part I-E, respondent and its predecessors, in addition to having obtained a substantial return on their investment, and having "expensed" $7,558,226 of property and overheads, had also collected $29,414,196 in cash (mostly from 1922 onward) toward the eventual retirement of the $36,043,195 of property referred to above. That is to say, at December 31, 1938, respondent had collected back from its customers through rates for gas service all but $6,628,999 of the cost of all the depreciable property it then owned.

Respondent claimed an annual depreciation alowance for the future of $1,300,000, which would mean that by about January 31, 1944, it would have collected from consumers every dollar of cost of its property except that small portion which does not depreciate and therefore has a resale value. It would mean that any amount collected fom that date onward in the guise of "annual depreciation" would, in fact, be *profit*—a profit which, if the charge continued at $1,300,000 annually, would give respondent, not the $1,375,725 we have fixed as fair return, but $2,675,725, or more than 12.6 per cent upon our found fair value. Since, through the process of accumulating depreciation reserve, the invested capital of respondent on January 31, 1944, would have been reduced to $6,115,128, the annual return to the owners of respondent from that date onward would be somewhat more than 43 per cent.

The above conclusions, of course, hold good only if respondent's property shall not have depreciated fully and been junked two years hence. That they do hold good is evidenced by our finding that respondent's overall accrued depreciation at December 31, 1938, was only 45 per cent, and even more by respondent's own claim that its property was in 72 per cent condition.

Some light is thrown upon the needs for annual depreciation by the following table, which reflects respondent's retirements over a period of seventeen years (the record does not contain this analysis for 1938):

Year	Property Actually Retired	Salvage Value	Less Charges to Expense	Less Charges to Surplus	Actual Capital Service Loss Charged to Depreciation Reserves	Per Cent of Fixed Capital
1921	$265,283.49	$163,504.54	$15,973.46	$1,342.36	$84,463.13	0.45
1922	455,641.93	124,559.09	14,320.70	2,179.86	314,582.28	1.62
1923	325,478.57	167,764.14	2,195.57	*26,006.74	181,525.60	0.89
1924	923,413.28	121,225.82	108,974.21	164,921.83	528,291.42	2.39
1925	373,544.77	99,613.73	10,840.35	39,252.52	223,838.17	0.68
1926	542,833.47	156,467.77	27,384.17	103,327.56	255,653.97	0.75
1927	882,965.44	299,926.27	81,527.82	114,992.72	386,518.63	1.10
1928	1,249,606.48	340,313.33	141,210.21	148,780.64	619,302.30	1.75
1929	1,169,335.89	347,010.35	160,349.80	145,187.47	516,788.27	1.45
1930	1,156,399.02	309,680.23	127,634.38	73,128.75	645,955.66	1.78
1931	823,512.49	160,066.14	34,395.54	144,909.23	484,141.58	1.30
1932	328,386.68	78,770.67	22,752.64	91,624.29	135,239.08	0.36
1933	343,189.00	85,797.93	28,526.23	52,023.64	176,841.20	0.47
1934	406,950.66	148,700.86	14,862.58	24,049.91	219,337.31	0.59
1935	432,621.78	102,394.80	7,612.95	42,547.59	280,066.44	0.75
1936	507,424.62	157,054.54	6,033.50	*12,207.08	356,543.66	0.93
1937	535,619.36	154,549.94	9,102.37	40,763.57	331,203.48	0.85

*Red

The average annual capital loss due to retirements has been 1.035 per cent, which, when applied to fixed capital of $38,865,972 at December 31, 1938, would forecast future annual retirement losses at $402,263.

After consideration of all of the evidence of record, we are of the opinion that $600,000 constitutes an adequate allowance for annual depreciation. Such allowance is more than enough to meet respondent's actual retirements based upon past experience, and it may be noted in passing that it will permit full recoupment of the entire cost of respondent's depreciable property in approximately eleven years from December 31, 1938.

The following table summarizes the adjustments we have made to respondent's 1939 operating results to obtain a basis for prescribing rates:

Operating revenue per Exhibit 57		$11,246,990
Add:		
Full year's sales to New York Natural Gas Corporation per Exhibit 59A	$1,071,620	
Full year's rental from same company	120,000	
	$1,191,620	
Deduct:		
One month's sales to New York Natural Gas Corporation	39,472	1,152,148
Adjusted operating revenue		$12,399,138
Operating expenses per Exhibit 57		$9,617,520
Add:		
Increased cost of gas due to adjusting New York Natural Gas Corporation Sales	$808,368	
Increased 1941 income taxes	83,000	
	891,368	
Deduct:		
Association dues not sustained	$7,185	
Rate case expense already amortized	169,806	
Property record expense amortization	12,000	
Annual depreciation in excess of $600,000	840,577	
	$1,029,568	138,200
Adjusted operating expenses		9,479,320
Adjusted operating income		$2,919,818

[36] The foregoing adjustments do not take into account the fact that respondent purchases large quantities of gas from an affiliate, Hope Natural Gas Company, at the apparently very high price of 38½ cents per thousand cubic feet, which in 1938 resulted in an expenditure of $1,105,160. Respondent has contended that since this gas moves in interstate commerce, the Federal Power Commission has the sole power to fix its price. With that viewpoint we agree, and in fact have filed complaint with that body against the Hope rate. On the other hand, under the decision of the superior court in the case of Solar Electric Company (1939) 137 Pa Super Ct 325, 31 PUR(NS) 275, 9 A(2d) 447, we are empowered to require respondent to show that charges by its affiliate are reasonable.

In other words, we cannot prescribe the price respondent shall pay Hope for gas, but we can prescribe how much of that price shall be allowable as an operating expense, and may disallow it in its entirety if respondent fails to submit sustaining evidence. Respondent has submitted no evidence upon the subject, other than a copy of the contract for the purchase of gas. However, since evidence is now before the Federal Power Commission upon the point, we will make no adjustment at this time, but will await that Commission's decision before determining whether respondent should revise its rates on this account.

IV. Findings and Order

We therefore find that the allowable annual operating expenses of respondent for the future are $9,479,320 to which must be added the $1,375,725 of return found heretofore, and the sum, $10,855,045, represents our finding of respondent's allowable revenues from gas operations (hereafter called "allowable revenues") for future years.

With this last figure as a basis, we may now proceed to a determination of allowable revenues in the past. It will be remembered that we have deducted from respondent's claimed operating expenses $169,806, representing amortization of rate case expense, because such amortization was completed in 1941. However, in prescribing rates for 1941 and prior years of the amortization period, such expense should be allowed. We therefore find that the allowable revenues of respondent for 1941 were the sum of $10,855,045 and $169,806, or $11,024,851.

For the year 1940, it is unnecessary to provide for increased Federal income tax rates, for the tax increase did not become effective until the following year. We therefore find that the allowable revenues of respondent for 1940 were $11,024,851, less the $83,000 allowed for increased taxes in later years, or $10,941,851.

As we have shown in the last table above, we took cognizance of the fact that the 1939 operating expenses did not take into account the additional cost to which respondent would be put from 1940 onward in furnishing year-round service to New York Natural Gas Corporation, and hence we increased the 1939 expenses by $808,368. However, respondent furnished such service for only one month of 1939, and the cost thereof was already included in respondent's figures before we adjusted them. For 1939, therefore, we find the allowable revenues of respondent were $10,941,851, less

the $808,368 of additional costs applicable only to subsequent years, or $10,133,483.

As stated in the forepart of this order, respondent filed a stipulation, to which Commission counsel agreed, that the determination of present fair value in this case should be upon the basis of December 31, 1938, figures, and this has been done. It follows that our finding of fair value is valid for the period from January 1, 1939, onward. Since consideration of rates prior to that date would require the submission of further data not offered of record, and since the year 1939 represents a full year's experience under Tariff No. 18, it is unnecessary for us to make findings as to the reasonableness of rates under such tariff prior to that date. We now proceed to a determination of the reasonableness of the rates as charged from that date onward.

Respondent's actual revenues from gas operations (hereafter called "actual revenues") for the year 1939 were $10,030,265, as shown in its Exhibit 57. Since the allowable revenues for the same period were found to be $10,133,483, we find that for that year the rates as charged under Tariff No. 18 were not only just and reasonable, but that the resultant revenues were deficient by $103,218.

The actual revenues of respondent for the year 1940 were $12,950,767 as shown by its annual report. Having found the allowable revenues for that year to have been $10,941,851, we find that the rates as charged under Tariff No. 18 for the first six months, and under Tariff No. 19 for the last six months, were unjust and unreasonable to the extent of $2,008,916. We make this finding as to both tariffs, inasmuch as respondent, in its Exhibit 57, estimated that Tariff No. 19 would have produced about $1,200,000 more than Tariff No. 18 in the full year 1939, and since Tariff No. 19 was in effect for only half of 1940, a portion of the excessive revenues must be ascribed to the earlier tariff.

We find that reparations are awardable for 1940, but that the amount thereof should be the excess revenues of $2,008,916 for that year, reduced by the amount of the deficiency of $103,218 to which respondent was entitled but which it did not collect in 1939. Accordingly, the net reparations awardable for these two years are $1,905,698.

Respondent has reiterated upon the record that the rates for industrial gas sales are competitive and subject to fluctuation with the prices of other fuels. In fact, respondent, in presenting its Tariff No. 19, stated repeatedly that it was necessary to thus increase the small user's rates, for additional revenues could not be obtained from industries under competitive conditions then prevalent. Even prior to that time, however, respondent originated the practice of designating tariff schedules applicable to large industrial users as "temporary" and making them effective for 6-month periods.

Since the rates to the larger users must fluctuate with market conditions, and since the total allowable revenues for any given period are a fixed amount, it follows that the difference between such fixed amount and the revenues obtainable from large users must be provided by variations in rates to the small users. That is to say, when competition forces the industrial rates downward, or when industrial use declines, a larger pro-

portion of the revenues must come from the small users; and correspondingly, when the rates which it is possible to charge industries increase, or when their use rises, the cost to the small users must be reduced. This being so, we conclude that the small users are entitled to the reparations awardable under this order, and to any other advantages or disadvantages to customers that result from our findings. We will so order.

The actual revenue figures of respondent for 1941 under Tariff No. 19 have not yet been made available to us, and consequently we are unable to make a specific finding as to the reasonableness of the rates for that year. However, we will so phrase our order as to permit or require respondent to adjust its revenues to the allowable revenues of $11,024,851 heretofore found.

BUCHANAN, Commissioner, dissenting: This case began April 20, 1937; the first hearing was held October 1, 1937; the last hearing was held November 15, 1940; the Commission decision was reached March 4, 1942, and by Commission action of February 2, 1942, I have six days within which to express my dissent.

It took three years for Peoples Gas Company to spend almost a million dollars to arrive at essential figures known or which should have been known to its officials on the first day of hearings, October 1, 1937.

It took the Commission one year, three months, and nineteen days to arrive at a decision.

It took one year and nine months' payment of excessive rates by the great portion of the domestic customers of Peoples to convince the present majority of the Commission that the rates were unreasonable and unjust; obviously were so on February 15, 1940, as was then maintained, and were likewise on July 1, 1940, when the superior court ruled otherwise.

The respondent's case both in presentation and testimony is replete with hypocrisy; legal, accounting, engineering, expert, and just plain.

For example, Rhodes, the principal engineering witness for the respondent, is a stockholder of Standard Oil Company of New Jersey, the owner of Peoples Natural Gas Company. Not a large stockholder, to be sure, but sometimes it requires little to sway a man's judgment, consciously or unconsciously, and the courts have so recognized it. Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 US 290, 78 L ed 1267, 3 PUR(NS) 279, 54 S Ct 647. It was witness Rhodes and staff that claimed a large share of rate case expenses, likewise it was Rhodes whose testimony and evasiveness as a witness, coupled with his admitted interest through stock ownership, who completely destroyed, in my opinion, all of the company's evidence as to reproduction cost new and depreciation.

Another example of every-day occurrence and an always popular bit of information to the consumer (the man who pays the bills) is the item of $7,185 paid in 1939 "dues" to the Natural Gas Men's Association which "dues" are matched to a greater or lesser extent by certain other Pennsylvania natural gas companies. Actually the association is first cousin to a "one-man" club and is the cover-all for that breed of legislative lice known as "lobbyist" and official doc-

tor to public utility news appearing in the public press.

The majority in their opinion disallowed this item as an operating expense. The parasitical practice itself should be prohibited.

But passing over the exhibits, which shuttled in and out of the record as rapidly as Commission employees discovered company accounting and engineering errors, deliberate and otherwise, there are several matters in particular that this case requires for its record.

It must be remembered that this company is a litigious utility by inheritance and by affiliation. As late as a month ago, its parent and its every affiliate in the natural gas business in Pennsylvania, New York, Ohio, and West Virginia were involved in some form of litigation with one or more governmental agencies. Some of their contentions were completely impossible on the face but provided a fertile field for expenditures of time, money, and patience.

The former president of the Peoples Natural Gas Company, and the man who filed the tariff for the increase in rates with this Commission on March 16, 1939, was transferred at or about the conclusion of the hearings in this case to the presidency of the East Ohio Gas Company. The city of Cleveland was then in litigation before the Federal Power Commission relating to a reduction of natural gas rates charged to that company by an affiliate. Within the last forty-five days that company has filed a new tariff increasing rates of East Ohio to the city of Cleveland, a procedure almost identical with that which took place before this Commission.

During the course of the original case and immediately following one of the worst years of business depression in recent history, Peoples Natural Gas Company filed with the Commission on March 16, 1939, a tariff drastically increasing domestic rates in the lowest consumption brackets. The tariff was immediately suspended and a maximum statutory period of eleven months thereupon applied within which the Peoples Natural Gas Company was required to produce evidence that the new rates were just and reasonable.

On February 15, 1940, the majority of the Commission found that Peoples had not shown that the increased rates were just and reasonable, for the reason that the company had failed to supply the Commission with information which had been repeatedly requested of it, relative to facts essential to the determination of the justness and reasonableness of the rates. In this conclusion, the Commission had the unanimous agreement of the Commission's staff based upon a staff analysis of the record which clearly revealed the confusion which that record entailed.

On July 1, 1940, the superior court of Pennsylvania overruled the Commission and permitted the increased rates to become effective as of that date, holding inter alia that the Commission must find facts to support its decision although obviously no facts could be found when none were present except that the respondent company had failed to supply them. I cannot emphasize too strongly my opinion that the superior court erred grievously when in effect it shifted the burden of proof from the company to the Commission.

The decision in this case should be compared with that in the recent case of Edison Light and Power Company (C. 11108) 40 PUR(NS) 146, because of the similarity of rate-making approach and the contrast in "judgment" figures or conclusions.

Here is a tabulation of the Commission's findings in the two cases:

	Edison	Peoples
Original cost depreciated	$3,482,546	$18,702,000[1]
Reproduction cost depreciated	3,926,804	39,730,207
Book cost, depreciated	2,579,755	9,869,793
Invested capital	.....	12,131,932

"Fair value" was found in Edison to be $3,925,000 or the equivalent of reproduction cost new less depreciation but in Peoples the "fair value" of the property was found to be $20,000,000 or the equivalent of original cost depreciated. Although both decisions came within two months of each other, the judgment of the Commission as to "fair value" reached opposite extremes in the two cases. There seems to be a complete lack of standards of judgment although both cases admittedly fall within the Smyth v. Ames ([1898] 169 US 466, 42 L ed 819, 18 S Ct 418) doctrine. The fault lies partly in the doctrine itself and partly in its application.

Passing over the obvious effect of each decision upon the rates of the respective companies, there is one thing in common to both cases—the book values, first, of property used and useful in the public service and, second, of the depreciation reserves. Of the figures set forth in the above tabulations, those two items alone are free from guess or estimates and, therefore, are completely factual and become, to my mind, "special facts" which must control even under the Smyth v. Ames decision, *supra*.

Book cost is merely original cost purged of its inflationary items less the depreciation reserve which has been accumulated through charges to the consumer. The usual experience in this respect is to find a deficiency of depreciation reserve. In such cases it works a hardship on the consumer because either maintenance expenses must be higher or eventually the service must suffer. Here, however, the consumer or ratepayer suffers because of an overcharge and unconsciously (being required by law to put his trust in regulatory Commissions) becomes the banker for the utility serving him.

As a banker, his position is unique because it is his money that is rendering service, nevertheless he is paying for the use of it to the profit of a third party.

In this case, the majority have found that expensed items cannot be written back into the rate base for rate-making purposes, for this conclusion, there is a long line of authorities. With exactly the same reasoning, where excessive depreciation reserves have been created at ratepayers' expense, the same conclusion should be reached here. Both expensed items and depreciation charges stem out of the same source—operating expenses.

Perhaps it can be better expressed in the language of the courts.

"But we cannot ignore the fact that most of the enumerated items have been paid by the public; they were not

[1] The majority of the Commission found as depreciated original cost the amount of $26,252,863. This amount, however, included $7,550,000 which had been charged to operating expenses and, therefore, has no place in original cost as a rate-making item. The above figure of $18,702,000 is a rounded figure which approximates true depreciated original cost as found by the majority.

willed to or given to the company; their payment was not a voluntary, but an involuntary, an enforced, payment, a payment which the public could not avoid. Theory in such cases must give way to fact. Equity and fair dealing require that at least two-thirds of the valuations placed on these natural gas wells by the witness be totally disregarded in ascertaining the fair value of the company's property on the reproduction theory; to regard all of it would require the public to keep paying a return and a depreciation charge on $450,400 of it, which it has already paid." Natural Gas Co. v. Public Service Commission, 95 W Va 557, PUR1924D 346, 359, 121 SE 716, 721; State v. Tri-State Teleph. & Teleg. Co. (1939) 204 Minn 516, 28 PUR(NS) 158, 284 NW 294, 313; Railroad Commission v. Cumberland Teleph. & Teleg. Co. (1909) 212 US 414, 424, 425, 53 L ed 577, 29 S Ct 357; Knoxville v. Knoxville Water Co. (1909) 212 US 1, 53 L ed 371, 29 S Ct 148; Peoples Gas Light & Coke Co. v. Slattery (1939) 373 Ill 31, 31 PUR(NS) 193, 25 NE(2d) 482; Wheeling v. Natural Gas Co. (1934) 115 W Va 149, 5 PUR(NS) 471, 175 SE 339; Los Angeles Gas & E. Corp. v. California R. Commission, 58 F(2d) 256, PUR1932C 397.

Factually, the book value of Peoples property amounts to $9,869,793. The net investment of Standard Oil Company in Peoples totals $12,744,-126. Obviously, to permit a fair value or rate base of $20,000,000 is to permit Standard Oil to earn on the *ratepayers' money* at least to the extent of $7,000,000.

If these elements of value, and they are the only *facts* in the case of that nature, were fully recognized there would and should be a substantial lowering of natural gas rates. If the practice approved in the majority opinion was to be followed between individuals, someone would end in jail or in court for an accounting.

There are other differences with the majority. The record here like the Edison record has complete support for a finding of a rate of return not exceeding 5 per cent. The majority found the proper return to be 6½ per cent which would effect an actual return on the investment approximating 11 per cent. The record is most conclusive that a public utility subject to sound regulation provides a security of investment and an assured return second only to governmental securities.

Likewise it seems to me that the proper annual depreciation charge was found to be $400,000, yet the actual finding of the Commission is $600,-000, a 50 per cent increase. Even so, in this respect, it is a vast improvement over the former charges of the company.

This case like the Edison is evidentiary of the almost complete lack of standards for rate making. The latitude granted Commissions in determining just and reasonable rates under Smyth v. Ames, *supra,* permits too many conflicting elements to influence the judgments which the courts so heartily advocate.

The solution is for the legislature to define the limitations within which Commissions and courts may act because after all rate making is a purely legislative function.

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on utility expansion programs, personnel changes, recent and coming events.

Equipment Notes

New Type Fluorescent Reflector

Development by the fluorescent lighting fixture industry of a new-type reflector, constructed of materials not vital to war production, is announced by the Lighting Division of Hygrade Sylvania Corporation, Salem, Mass.

Hygrade's fixtures utilizing the new composition reflector will employ only about one-third as much steel as present fixtures, and thus the amount of steel made available for other war production will be considerable.

Made of a specially treated composition, the reflector is considerably lighter in weight than present reflectors. General appearance, however, remains the same. The reflecting surface is the same high-temperature synthetic enamel used on many present Hygrade fixtures, and has equally high light reflectivity.

Fluorescent Colors Standardized

Three standardized cold-cathode fluorescent lighting colors are announced by the Fluorescent Lighting Association, 509 Fifth Ave., New York City. These are the F.L.A. Soft White, F.L.A. 3500 White, and the F.L.A. Daylight. Other standards will follow from time to time.

Bristol Develops Radiation Pyrometer

A radiation pyrometer, the Pyrovac, has been developed by The Bristol Company, Waterbury, Conn. This new instrument is designed for recording, indicating, or automatically controlling temperatures in furnaces and kilns above 900° F. The temperature-sensitive unit or radiation head is mounted on the outside of the furnace out of the hot zone where it picks up heat rays emitted from the object under measurement, thus registering its surface temperature.

The Pyrovac is intended for use in measuring and automatically controlling temperatures that fall into the following classifications:

1. High temperatures out of the range of the thermocouple.
2. Temperatures for which rare-metal thermocouples are used.
3. Surface temperatures, such as roof, wall, duct, lining, or retort temperatures and the temperature of the work itself rather than furnace or kiln temperature surrounding the work.
4. Where object is moving, is inaccessible, or where there are space limitations.

Heat Resistant Coating

A liquid coating, having the consistency of a light-bodied paint and which will prolong the normal life of brick or metal against the ravages of extreme heat, has been developed by the Geo. R. Mowat Co., 28 West 44th St., New York city.

The product, according to the manufacturer, has proved to be highly resistant to extreme heat (3500° F.) when applied according to simple directions, and "set" by heat-treating at approximately 1000° F. or by direct flame impingement.

A leaflet containing full information, and the names of many outstanding companies who use this product may be had on request from the manufacturer.

Employee Identification Unit

The WIM Identification unit is announced by Photographic Equipment, Inc., 210 East Parkway, Pittsburgh, Pa., for making proper and business-like identification photographs of employees with minor loss of time. The photographic record also shows the employee's height and identification number.

Simplicity of operation is the outstanding feature of the instrument. The WIM unit uses standard cartridges of 35 mm motion picture film. All of the special adjustments as to lighting, distance and other conditions that expert photographers meet in work of this kind are pre-adjusted before the machine leaves the factory. With the WIM unit, 1,000 pictures a day can be taken, if required.

A descriptive bulletin is available from the manufacturer.

Equipment Notes (Cont'd)

Hand-Wiping Safety Solvent

A hand-wiping safety solvent which is to be marketed as a safety replacement for naptha, gasoline, and kerosene in removing cosmoline out of rifles issued to troops, and for industrial use, is announced by The Curran Corporation, Malden, Mass.

The new solvent is to be marketed under its blanket trade-mark of Gunk XP-92; to be used as a concentrate and to be diluted with water.

This new solvent is described as a unique safety solvent because in spite of its high solvency against mineral oil or dirt, it does not de-oil the skin, has no toxic vapors, no flash or fire point, and leaves an invisible rust preventative film so thin it cannot be detected.

Catalogs and Bulletins

Axle Maintenance Chart

The Timken-Detroit Axle Co., Detroit, Mich., announces a new 22 x 38 in. wall chart describing axle inspections which should be made at regular intervals in carrying out a well-rounded truck maintenance program. The new wall chart is one of many similar maintenance aids produced by the company in connection with its A. M. (Axle Maintenance) Program launched the first of this year.

Copies of the wall chart may be secured without charge by addressing the Timken service department at the main plant in Detroit, Mich.

Speeds Office Erection

The speedy erection of offices in industrial plants is the subject of a new illustrated folder published by Johns-Manville. The folder points out the versatility of Transite movable asbestos walls, which, it states, can make possible, in many cases, the complete construction of completely finished new offices overnight. Copies of the folder, Form TR-29A, may be secured from Johns-Manville, 22 East 40th Street, New York, N. Y.

Cook Electric Issues Price List

Cook Electric Co., Chicago, has issued its 1942 spring Price List—a 12 page, 8½ x 11 in. illustrated booklet, together with bulletins describing the new uniflex cable terminal and protected or unprotected pole jacks for telephone patrol stations.

Q-Floor Wiring Catalog

A new 24-page catalog on G.E. wiring for underfloor electrical distribution in H. H. Robertson cellular steel Q-Floors has been announced by the conduit products sales section of General Electric Company's appliance and merchandise department, Bridgeport, Conn. G.E. fittings and accessories, illustrated and described in the catalog, provide for the use of the hollow cells of Q-Floors as raceways

Catalogs and Bulletins (Cont'd)

for wiring, thus making virtually the entire floor available for electrical services. Six basic types of Q-Floors are described.

Diagrams and cutaway photographs illustrate clearly how the fittings and accessories are installed. Copies of the catalog are available on request.

Machine Maintenance With Metallizing

A 16-page Bulletin (42A) published by Metallizing Engineering Co., Inc., Long Island City, N. Y., describes the metallizing process and equipment for its application. It tells briefly how essential industries are eliminating replacements, and increasing service-life of equipment now difficult to replace, by building up worn diameters with any desired wear, and corrosion-resistant sprayed metal. The bulletin also indicates how metallizing is used to rapidly salvage mismachined parts and defective castings in production. Examples are given to show how metallized "inserts" and coatings are helping manufacturers conserve vital metals.

Cold-Cathode Fluorescent Illumination

The unique advantages of cold-cathode fluorescent lighting, particularly as applied to wartime industries, are dealt with in an 8-page folder just issued by the Fluorescent Lighting Association, 509 Fifth Ave., New York City.

This type of lighting, which can be effectively installed without reflectors or fixtures, is filling a real need not met by the usual fluorescent fixtures.

The folder also deals with recent standardization of equipment and installation practice by means of nation-wide certification of approved products and of local lighting contractors. A copy of the folder is available on request to the Association.

"We Work for Victory and We Plan for Peace"

A colorful brochure entitled "We Work for Victory and We Plan for Peace," has been issued by the Allis-Chalmers Manufacturing Company, Milwaukee, Wis. This company also has announced the early release of a sound moving picture with the same title and the same general theme.

The brochure is designed to show what products Allis-Chalmers is making under wartime conditions, and where and how these products are helping to produce the guns, tanks, planes, and ships needed so urgently in our war efforts.

Arrangements are being made to show the film in various cities of the country.

Manufacturers' Notes

Moses Elected Vice President of Combustion Engineering

A. J. Moses recently was elected vice president of Combustion Engineering Company, Inc., New York.

Mr. Moses, a graduate of Georgia School of Technology, has been connected with Combustion Engineering Company, or its constituent companies, since 1920 and for several years past has been general manager of the company's Hedges-Walsh-Weidner division at Chattanooga. He will continue to be responsible for operations of this major manufacturing division which is now engaged almost entirely in production related to the war effort.

GMC Service Program

A new, all-out service program for the Army, designed to help keep GMC military trucks "pulling for victory" has been inaugurated by General Motors Truck & Coach.

Although GMC has maintained a field organization devoted exclusively to the servicing of Army trucks for the past two years, this newly expanded Army service program will see trained GMC service men stationed at practically all important Army camps in the United States.

This Army truck servicing plan is the second progressive program that GMC has announced within recent months to aid truck transportation in meeting war-time demands. The first was GMC "Victory Maintenance" . . . a scientific servicing plan for commercial operators to help keep their trucks on the job for the duration.

To Promote Industrial Conservation

As a contribution to all-out war production, FORBES Magazine has announced a prize contest on "How My Company Conserves and Salvages Materials Vital for War."

Prizes are offered for reports on conservation and salvage programs already in operation which, in the opinion of the judges, are the most significant, most interesting and of greatest value as a guide to others. First prize will be a $100 War Bond; second prize, a $50 War Bond; third prize, a $25 War Bond. In addition, the company whose plans are described in prize-winning papers will receive citations.

Heat Flow Research Program

Dean J. W. Barker, School of Engineering, Columbia University, New York, and F. C. McIntosh, Pittsburgh, Pa., Chairman of the Committee on Research of the American Society of Heating and Ventilating Engineers, announce the consummation of a coöperative agreement to investigate the heat flow through various building walls.

The research program will be carried on in the heat transfer laboratory at the University by means of a specially designed apparatus for

Manufacturers' Notes (Cont'd)

transient heat flow, in accordance with a study jointly planned by Dr. F. C. Houghten, Director of the ASHVE laboratory, Pittsburgh, and Dr. Victor Paschkis, Research Associate at the University, the latter of whom will conduct the laboratory work.

From the results of this research it is predicted that the engineer will have additional data available for analyzing more accurately the cooling requirements of an air conditioned building.

Robins Conveying Belt Co. Announce Promotions

The Robins Conveying Belt Company, Passaic, N. J., announces that Alfred S. Otton is relieved of his former duties as advertising manager in order that he may handle important productive assignments in connection with the war work now being done by the company. Mr. Otton will, in addition, be responsible for both the sales and production end of the Screen Cloth Department at Passaic.

John M. Lupton, formerly assistant advertising manager, has been promoted to the position of advertising manager.

Microfilm Records Save Space

Through the use of microfilming equipment a story of the electrical industry's growth since the early 1880's is being transferred from two million sheets of old Irish linen and drawing paper to movie film at the Westinghouse East Pittsburgh works. An acre of storage space will be cleared for productive use and a more efficient record system set up by reducing the size of tons of permanent records. When recorded on film, documents which now occupy more than an acre in floor space can be stored in a vault about 10 feet square.

Tests Carbon Dioxide On Fire-Bombs

In an effort to remove the confusion regarding the effectiveness of carbon dioxide as an extinguishing agent for magnesium incendiary bombs, engineers of Walter Kidde & Company recently announced results of comparative tests as to the efficiency of this inert gas on fire-bombs.

These tests, conducted in an enclosed space show that total flooding with carbon dioxide not only reduces the burning time of the magnesium by one-third, but also tend to isolate the fire and prevent adjacent combustibles from igniting. By comparison, a water spray properly applied speeds up the burning of the bomb to one-tenth of its normal burning time.

G-E Lowers Accident Rate

Despite the fact that the General Electric Company has more than doubled its manpower in the past two years, and has taken on thousands of employees without any previous experience in factory work, the number of days lost due to accidents in 1941, per thousand hours worked, was second lowest of any year on record.

George E. Sanford, chairman of the general safety committee of the company, who made the announcement, added that the first quarter of 1942 shows a 50 per cent improvement over the same period of 1941.

Westinghouse Elects 4 Vice Presidents

The following four executives recently were elected vice presidents of the Westinghouse Electric and Manufacturing Company:

Andrew H. Phelps of Pittsburgh, Pa., manager of purchases and traffic; L. E. Osborne of Philadelphia, Pa., manager of steam division; Frank C. Reed, of Jersey City, N. J., president of the Westinghouse Electric Elevator Company, a subsidiary; and Walter C. Evans of Baltimore, Md., general manager of radio, x-ray and broadcasting divisions. All the new vice presidents will continue in their present executive posts.

Allis-Chalmers Elects Geist

Walter Geist recently was elected president of the Allis-Chalmers Manufacturing Co., Milwaukee, Wis. He replaces W. C. Buchanan whose resignation was forced by ill-health.

Mr. Geist, who is 48 years of age, entered the company's employ as an errand boy in 1909. One of his major contributions to industry was the development of the "Texrope V-Belt Drive."

In 1933, Mr. Geist was made general representative of the company in charge of its fifty-two district offices, foreign and domestic, all dealers, sales promotion and advertising. He became a vice president in 1939.

G-E Engineers Advanced

Ira A. Terry, for the past two years assistant to J. D. Harnden, engineering assistant to the manager of General Electric's largest plant, has been appointed general assistant to H. A. Winne, G-E vice president in charge of design engineering, Apparatus Department, it has been announced by the company. Walter C. Heckman of the G-E Turbine Engineering department has succeeded Mr. Terry.

Pump Companies Merge

Completing another phase of progressive plant expansion, Peerless Pump Division of the Food Machinery Corporation, Los Angeles, California and Canton, Ohio, announces the acquisition of the Sterling Pump Corporation, Hamilton, Ohio and Stockton, California.

According to Vernon Edler, vice-president and general manager of the Peerless Pump Division, consolidation of the two manufacturing plants will greatly expedite handling of a tremendously expanded volume of business.

The Robertshaw book "Measured Heat" has become a competent cooking manual in thousands of schools and colleges.

One year ago we told her about "Measured Heat"

Robertshaw bases its "measured heat" program on this fundamental: You can teach the public to *want* vitamins, but you can't actually get it to *take* vitamins—unless you teach proper cooking. Poor cooking breaks down vitamins, as well as appetite. It was a year ago that Robertshaw began teaching this.

And so, today when America looks to her kitchens, hundreds of thousands of students and homemakers are already learning better cooking methods — helped by Robertshaw-equipped ranges and the "measured heat" program.

Robertshaw proudly makes this contribution to the nation's health, its conservation of food and fuel, and the winning of the war.

ROBERTSHAW
HEAT CONTROLS

ROBERTSHAW THERMOSTAT COMPANY, YOUNGWOOD, PA.

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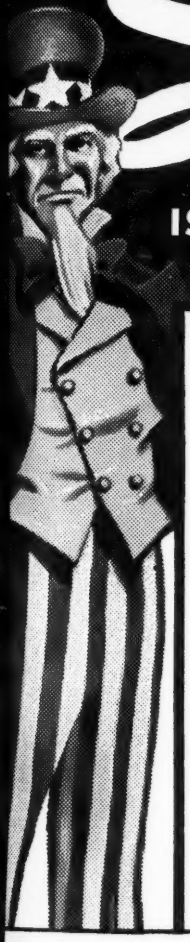

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